

## R. J. Shannon

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**From:** R. J. Shannon  
**Sent:** Tuesday, July 30, 2024 4:59 PM  
**To:** gray.burks@bakerassociates.net; Gray Burks; H. Gray Burks IV; reese.baker@bakerassociates.net  
**Cc:** Christopher Murray; Kyung S. Lee  
**Subject:** (1 of 4) Galleria 2425 - 2425 WL LLC - Trustee's First Set of Rogs, RFPs, and RFAs  
**Attachments:** Galleria 2425 - 2425 WL - Trustee's First Set of Interrogatories, RFPs, and RFAs.pdf; Galleria 2425 - 2425 WL - Trustee's First Set of Interrogatories, RFPs, and RFAs.docx

(1 of 4)

Gray,

Please find attached (a) a compiled version of the Trustee's First Set of Interrogatories, Requests for Production, and Requests for Admission to 2425 WL LLC regarding Trustee's Objection to Claim No. 7 and (b) a Word version to make responding easier.

The document is quite long because of the document RFAs. If it is helpful, you can download the separate documents at the following link: <https://www.dropbox.com/scl/fo/jqme22olrw8btzyp132p1/ALakNeaaHY8-3eEnW4YDUYE?rlkey=oles5kagrhywikmyq8kd30rad&dl=0>



### Dropbox folder

<https://www.dropbox.com/scl/fo/jqme22olrw8btzyp132p1/ALakNeaaHY8-3eEnW4YDUYE?rlkey=oles5kagrhywikmyq8kd30rad&dl=0>

[Open in Dropbox](#)

The RFPs supersede the Trustee's document requests on 2425 WL LLC sent on May 21, 2024. I will follow up with rogs/requests for Choudhri and Jetal Capital and an indication of the documents that the Trustee no longer requires from the Debtor.

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

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In re:

GALLERIA 2425 OWNER, LLC,

Debtor.

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Chapter 11

Case No. 23-34815

**DECLARATION OF ROBERT JOSEPH SHANNON**

I, Robert Joseph Shannon, declare as follows regarding the Witness and Exhibit List (the “W&E List”) and related exhibits submitted by Christopher R. Murray (the “Trustee”) in connection with his objection to Claim No. 7 of 2425 WL LLC:<sup>1</sup>

1. My name is Robert Joseph Shannon. I am known personally and professionally as “R. J. Shannon.” I am a partner at the law firm of Shannon & Lee LLP, which has been employed as attorney for the Trustee in this case.

2. Except as otherwise noted, all facts set forth in this declaration are based upon my personal knowledge. If called upon to testify, I would testify competently to the facts set forth in this Declaration.

**Interrogatories, Requests for Production, and Requests for Admission**

3. On July 30, 2024, I served on 2425 WL LLC, by and through its attorney H. Gray Burks, IV, by email, the Trustee’s First Set of Interrogatories, Requests for Production, and Requests for Admission to 2425 WL LLC Regarding Trustee’s Objection to Claim No. 7 (the “Written Discovery”).

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<sup>1</sup> Capitalized terms used but not defined in this declaration have the meanings ascribed to such terms in the Motion.

4. The Trustee's Exhibit 25 filed along with the W&E List is a true and correct copy of the Written Discovery.

5. The Trustee's Exhibit 26 filed along with the W&E List is a true and correct copy of the email serving the Written Discovery on 2425 WL LLC.

6. Among the Written Discovery were a number of requests for admission (the "RFAs") made pursuant to Rule 36 of the Federal Rules of Civil Procedure.

7. No objections or responses to the Written Discovery were provided on or before August 29, 2024. On such date, the RFAs were deemed admitted pursuant to Rule 36(a)(3) of the Federal Rules of Civil Procedure.

**Requests for Admission Related to Exhibits Filed with the W&E List**

8. A number of the RFAs sought the admission of the genuineness of documents of which the Trustee anticipates seeking admission as evidence at the hearing on the Trustee's objection to Claim No. 7.

9. The following chart summarizes the documents the genuineness of which were admitted pursuant to the RFAs:

<i>W&amp;E List</i>	<i>RFA</i>
2	REQUEST NO. 24: Admit that the document attached hereto as Exhibit 1 is a true and correct copy of the 2425 WL Note
3	REQUEST NO. 25: Admit that the document attached hereto as Exhibit 2 is a true and correct copy of the 2425 WL DOT.
4	REQUEST NO. 26: Admit that the document attached hereto as Exhibit 3 is a true and correct copy of the Settlement Statement.
5	REQUEST NO. 39: Admit that the document attached hereto as Exhibit 16 is a true and correct copy of the transcript of the January 31, 2024, hearing in the Current Chapter 11 Case.
7	REQUEST NO. 40: Admit that the document attached hereto as Exhibit 17 is a true and correct copy of the NBK Memo.

<i>W&amp;E List</i>	<i>RFA</i>
8	REQUEST NO. 28: Admit that the document attached hereto as Exhibit 5 is a true and correct copy of the NBK Loan Agreement.
9	REQUEST NO. 29: Admit that the document attached hereto as Exhibit 6 is a true and correct copy of the NBK Note.
10	REQUEST NO. 30: Admit that the document attached hereto as Exhibit 7 is a true and correct copy of the NBK DOT.
11	REQUEST NO. 31: Admit that the document attached hereto as Exhibit 8 is a true and correct copy of the NBK Assignment of Rents.
12	REQUEST NO. 34: Admit that the document attached hereto as Exhibit 11 is a true and correct copy of the Mezzanine Loan Agreement.
13	REQUEST NO. 32: Admit that the document attached hereto as Exhibit 9 is a true and correct copy of the documents transferring tax liens from the Debtor to Caz Creek TX II, LLC and filed in the real property records of Harris County as File No. RP-2020-112204.
14	REQUEST NO. 33: Admit that the document attached hereto as Exhibit 10 is a true and correct copy of the "Tax Lien Contract" between the Debtor and Caz Creek TX II, LLC and filed in the real property records of Harris County as File No. RP-2020-237529.
16	REQUEST NO. 35: Admit that the document attached hereto as Exhibit 12 is a true and correct copy of the Debtor's Application for Registration of a Foreign Limited Liability Company filed with the Texas Secretary of State on April 5, 2018.
17	REQUEST NO. 37: Admit that the document attached hereto as Exhibit 14 is a true and correct copy of Galleria 2425 JV, LLC's Application for Registration of a Foreign Limited Liability Company filed with the Texas Secretary of State on April 5, 2018.
18	REQUEST NO. 36: Admit that the document attached hereto as Exhibit 13 is a true and correct copy of the Amended and Restated Limited Liability Company Agreement of Galleria 2425 JV, LLC, dated May 23, 2018.
19	REQUEST NO. 38: Admit that the document attached hereto as Exhibit 15 is a true and correct copy of the Unanimous Written Consent of the Members in Lieu of a Meeting for Galleria 2425 JV, LLC.
22	REQUEST NO. 27: Admit that the document attached hereto as Exhibit 4 is a true and correct copy of the Plaintiff's Original Petition and Exhibits in Cause No. 2021-63370 (281st District Court, Harris County, Texas).



10. The exhibits attached to the W&E List referenced in the above chart are copies of the documents attached to the Written Discovery, the genuineness of which has been deemed admitted by operation of Rule 36(a)(3) of the Federal Rules of Civil Procedure.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 4, 2024.

By:   
Robert Joseph Shannon

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

IN RE:	§	
	§	CASE NO. 23-34815
GALLERIA 2425 OWNER, LLC,	§	
	§	CHAPTER 11
DEBTOR	§	

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**EMERGENCY MOTION TO TERMINATE OR DENY OBJECTIONS TO CLAIM  
AS MOOT; OR ALTERNATIVELY CONTINUE HEARINGS  
[DOCKET NOS. 402, 403 & 404]**

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**THIS MOTION MAY BE CONSIDERED EX PARTE.**

**EMERGENCY CONSIDERATION IS REQUESTED AT OR PRIOR TO THE  
COMMENCEMENT OF THE OBJECTION TO CLAIMS HEARING SET FOR  
SEPTEMBER 6, 2024, AT 9:00 A.M.**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

COMES NOW Ali Choudhri, 2425 WL, LLC, and Jetall Capital, LLC (collectively the “Claimants”), and respectfully request that this Court enter an order denying the Chapter 11 Trustee’s objections to Claim Numbers 7, 22, 23, and 24 as moot in that each of these claims have been “canceled and extinguished” under Article III(B)(h) of the confirmed plan.

1. **Basis for Emergency Consideration.** On July 24, 2024, this Court converted the initial hearings on Trustee’s objections to claims to an evidentiary hearing set for September 6, 2024. Today, on September 5, 2024, this Court entered an *Order Granting Motion for Summary Judgment* overruling 2425 WL, LLC’s objection to the claims of National Bank of Kuwait, S.A.K.P. New York Branch (“NBK”). (Docket No. 702). The Court held that the plan allows and provides for the treatment of NBK’s claim and that the terms of the plan bind the parties with

respect to claim allowance and treatment. This analysis, irrespective of whether the parties agree or disagree, is dispositive of the Trustee's remaining four (4) objections to claim.

2. **Trustee's Objections to Proofs of Claims are Rendered Moot by the Confirmed Plan.** Each of the proofs of claim at issue are "Insider Claims" as defined under the confirmed plan. The confirmed plan provides that: On the Effective Date, all Insider Claims shall be "canceled and extinguished". (Docket No. 566, p. 19, Plan Article III(B)(h)).

3. Since the initial conference on these objections to claim held July 24, 2024, two new factors have occurred. (i) The Trustee filed a Report of Sale (Docket No. 675); and (ii) according to NBK, the effective date of the plan has occurred and substantial consummation of the plan has occurred as of August 21, 2024. (See Docket No. 676). As a result, this Court does not have a justiciable matter to decide with respect to allowance or disallowance of Claim Nos. 7, 22, 23, or 24 filed by Insiders, because these claims have already been "cancelled and extinguished" with respect to Debtor's Estate. The order confirming plan has been appealed, but pending appeal, the terms of the plan are now binding on all parties.

4. Accordingly, the Trustee's objections must be denied or dismissed as moot. If the order confirming plan is reversed and remanded with respect to cancellation of these claims in the plan, then this Court would then have a justiciable issue to consider.

5. **Alternatively, Continuance of Evidentiary Hearings Due to Mr. Choudhri's Health Making Him Unavailable to Prepare for and Appear at This Hearing.** Yesterday, on September 4, 2024, the Trustee filed new witness and exhibit lists for each of the remaining four (4) objections to claims. The changes in witnesses and exhibits for the objection to Claim No. 7 of 2425 WL, LLC are substantial, as they add two new witnesses and numerous new exhibits. Mr. Choudhri has informed undersigned counsel that his current health condition renders him

unavailable today to assist in preparation for the hearing in response to these new witnesses and exhibits, and unavailable to come to court tomorrow.

6. Although the initial hearing was conducted on July 24, 2024, Trustee's counsel waited until September 4 to list for the first time new witnesses and new exhibits.

7. **Alternatively, With Respect to Claim No. 7, Invoking the Adversary Rules.**

Back on July 23, 2024, undersigned counsel on behalf of 2425 WL, LLC requested that adversary rules be invoked with respect to objection to Claim No. 7. That objection to claim attacks the validity of the note and therefore the validity of the mortgage on the property. Under Texas law, the note and deed of trust cannot be separated. By challenging the validity of the note, the Trustee is also challenging the validity of the deed of trust. Challenging the validity of the note is moot under the confirmed plan. Additionally, the Trustee does not have standing to challenge the validity of the deed of trust on property which the Estate no longer owns.

8. If this Court holds that the Trustee's objections to claim are not moot, then the need to invoke the adversary rules, especially with respect to Claim No. 7 (initial disclosures, attorney conference, Rule 26 conference report, scheduling order/conference, including discovery periods), are highlighted by the two additional witnesses and additional exhibits which the Trustee listed yesterday. (See Docket No. 692). These witnesses were not listed on the Trustee's prior witness and exhibit list (Docket Nos. 633 & 641), and were never disclosed to undersigned counsel. Accordingly, there is no opportunity to depose these witnesses, establish a basis for cross-examination, or determine any necessary counter-witnesses and rebuttal exhibits.

WEREFORE, PREMISES CONSIDERED, Claimants respectfully pray that this Court:

(A) Terminate or deny as moot the Trustee's objections to Claim No. 7 (Docket No. 402), Claim No. 22 (Docket No. 403), and Claim Nos. 23 and 24 (Docket No. 404); or

(B) Alternatively, if the Court holds that the plan is not binding on the parties to these claims and objections, continue the hearings on objections to Claim Nos. 22, 23, and 24 for approximately thirty (30) days, and set a scheduling conference for objection to Claim No. 7; and

(C) Grant Claimants such other and further relief, in equity or at law, to which they may respectively show themselves justly entitled.

Dated: September 5, 2024

Respectfully submitted,

/s/ H. Gray Burks, IV

H. Gray Burks, IV

State Bar No. 03418320

BurksBaker, PLLC

950 Echo Ln, Suite 300

Houston, TX 77024

Telephone: (713) 897-1297

Facsimile: (713) 869-9100

Email: [gray.burks@burksbaker.net](mailto:gray.burks@burksbaker.net)

*Attorneys for Ali Choudhri, 2425 WL, LLC, and  
Jetall Capital, LLC*

## **UNSWORN DECLARATION OF H. GRAY BURKS, IV**

I, H. Gray Burks, IV, submit this unsworn declaration under penalty of perjury pursuant to 28 U.S.C. § 1746. I declare that:

1. I have personal knowledge of the below information and have capacity to make this declaration.
2. The pleadings in the foregoing motion are true and correct.
3. I have discussed settlement, and cancelling or continuing these hearings with the Chapter 11 Trustee's counsel, R.J. Shannon, today September 5, 2024, and he does not agree that the objections are moot or that the hearings should be continued for any reason.
4. I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 5, 2024

/s/ H. Gray Burks, IV  
H. Gray Burks, IV  
State Bar No. 03418320  
BurksBaker, PLLC  
950 Echo Ln, Suite 300  
Houston, TX 77024  
Telephone: (713) 897-1297  
Facsimile: (713) 869-9100  
Email: [gray.burks@burksbaker.net](mailto:gray.burks@burksbaker.net)

**THIS UNSWORN DECLARATION IS MADE UNDER PENALTY OF PERJURY**

### **CERTIFICATE OF SERVICE**

I hereby certify that on September 5, 2024, I caused a copy of the forgoing Emergency Motion to be served by electronic notice on all parties registered to receive electronic notice, including the Chapter 11 Trustee and his attorneys, through the Electronic Document Filing System of the United States Bankruptcy Court for the Southern District of Texas.

I further certify that on September 5, 2024, I caused a copy of the foregoing Emergency Motion to be served on counsel for the Chapter 11 Trustee, R.J. Shannon, to be served by email at [rshannon@shannonleellp.com](mailto:rshannon@shannonleellp.com).

/s/ H. Gray Burks, IV  
H. Gray Burks, IV

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

IN RE:	§	
	§	CASE NO. 23-34815
GALLERIA 2425 OWNER, LLC,	§	
	§	CHAPTER 11
DEBTOR	§	

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**ORDER DENYING OBJECTIONS TO CLAIM AS MOOT**

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On consideration of the *Emergency Motion to Terminate or Deny Objections to Claim as Moot; or Alternatively Continue Hearings* filed by Ali Choudhri, 2425 WL, LLC, and Jetall Capital, LLC, and finding that each of the claims at issue are “canceled and extinguished” pursuant to the confirmed plan, it is

**ORDERED** that Trustee’s objections to Claim No. 7 (Docket No. 402), Claim No. 22 (Docket No. 403), and Claim Nos. 23 and 24 (Docket No. 404) are denied as moot.

**SIGNED:**



**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

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In re:

GALLERIA 2425 OWNER, LLC,  
  
Debtor.

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) Chapter 11  
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) Case No. 23-34815  
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**TRUSTEE’S OBJECTION TO EMERGENCY MOTION TO TERMINATE OR DENY  
OBJECTIONS TO CLAIM AS MOOT OR ALTERNATIVELY CONTINUE HEARINGS**

Christopher R. Murray, in his capacity as trustee of the liquidation trust in the above-captioned case (the “Trustee”), hereby files this objection (the “Objection”) to Emergency Motion to Terminate or Deny Objections to Claim as Moot; or Alternatively Continue Hearings [ECF No. 705] (the “Motion”)<sup>1</sup> as follows:

**OBJECTION**

1. Less than eleven (11) hours before a hearing, Mr. Choudhri, 2425 WL LLC, and Jetall Capital, LLC filed the Motion. The Claimants assert, contrary to their positions in the responses to the Trustee’s objections to claim, that the objections are now moot, Mr. Choudhri is suddenly unable to prepare or appear at the hearing, and that the adversary rules should be applied to the Trustee’s objection to Claim No. 7. Their motivations are obvious and consistent with their other actions to delay, obfuscate, and increase costs in this case. The Motion should be denied.

**A. The assertion that the claim objections are moot is contrary to the position asserted in the Claimants’ responses and in other pending matters.**

2. Each of the Claimants expressly argued that their claims were *not moot* due to the confirmed plan in this case (the “Plan”). Excerpts from the various responses are set out below.

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<sup>1</sup> Capitalized terms used but not defined in this Objection have the meanings ascribed to such terms in the Motion.

Response to Trustee's Objection to Claim No. 7 [ECF No. 595]:

8. **Effect of Chapter 11 Plan.** The Chapter 11 plan has no binding, collateral estoppel, or *res judicata* effect on this proof of claim or the Trustee's objection. The Trustee may argue that this Court's plan confirmation order entered June 22, 2024 (Docket No. 566), renders the proof of claim moot. However, as a matter of law, that is incorrect. Both *res judicata* and collateral estoppel require that an order be a "final order". NBK's plan is neither effective nor substantially consummated on its own terms. This Court's confirmation order is not a final order as it remains subject to appeal. 2425 WL, LLC intends to file a notice of appeal and prosecute the appeal pursuant to 28 U.S.C.

Response to Trustee's Objection to Claim No. 22 [ECF No. 592]:

9. **Effect of Chapter 11 Plan.** The Chapter 11 plan has no binding, collateral estoppel, or *res judicata* effect on this proof of claim or the Trustee's objection. The Trustee may argue that this Court's plan confirmation order entered June 22, 2024 (Docket No. 566), renders the proof of claim moot. However, as a matter of law, that is incorrect. Both *res judicata* and collateral estoppel require that an order be a "final order". NBK's plan is neither effective nor substantially consummated on its own terms. This Court's confirmation order is not a final order as it remains subject to appeal. 2425 WL, LLC intends to file a notice of appeal and prosecute the appeal pursuant to 28 U.S.C.

Response to Trustee's Objection to Claim No. 23 [ECF No. 593]:

8. **Effect of Chapter 11 Plan.** The Chapter 11 plan has no binding, collateral estoppel, or *res judicata* effect on this proof of claim or the Trustee's objection. The Trustee may argue that this Court's plan confirmation order entered June 22, 2024 (Docket No. 566), renders the proof of claim moot. However, as a matter of law, that is incorrect. Both *res judicata* and collateral estoppel require that an order be a "final order". NBK's plan is neither effective nor substantially consummated on its own terms. This Court's confirmation order is not a final order as it remains subject to appeal. 2425 WL, LLC intends to file a notice of appeal and prosecute the appeal pursuant to 28 U.S.C.

Response to Trustee's Objection to Claim No. 24 [ECF No. 594]:

7. **Effect of Chapter 11 Plan.** The Chapter 11 plan has no binding, collateral estoppel, or *res judicata* effect on this proof of claim or the Trustee's objection. The Trustee may argue that this Court's plan confirmation order entered June 22, 2024 (Docket No. 566), renders the proof of claim moot. However, as a matter of law, that is incorrect. Both *res judicata* and collateral estoppel require that an order be a "final order". NBK's plan is neither effective nor substantially consummated on its own terms. This Court's confirmation order is not a final order as it remains subject to appeal. 2425 WL, LLC intends to file a notice of appeal and prosecute the appeal pursuant to 28 U.S.C.

The Trustee gave the Claimants' arguments credence and continued with the claim objections on the merits. The Claimants should not be allowed to reverse course at this point when the Trustee has prepared for trial for the second time.

3. The Claimants cannot have it both ways. If the Plan is binding, then it needs to be binding. The Claimants cannot turn around and appeal the Court's granting of summary judgment with respect to 2425 WL LLC's claims against NBK. Nor should they be allowed to maintain their appeals to confirmation of the plan or assert that the pending appeal allows the defensive use of the claims as setoff amounts. Otherwise, there remains a live issue for decision that may result in clarifying other issues in the case. Disallowing the claims may have a tangible, meaningful effect. If it did not matter, the claimants could simply withdraw their opposition to the claim objections.

**B. The Court's order on the summary judgment motion does not compel the result indicated by the Claimants.**

4. The Claimants assert that the Order Granting Motion for Summary Judgment [ECF No. 702] requires an order finding the Trustee's claim objections moot. The Trustee disagrees.

5. The Order Granting Motion for Summary Judgment does not find that the claim objections are moot. The Court's ruling—as the undersigned understands it—is that the confirmed plan expressly determines that NBK's claims are allowed and the amount in which they are

allowed. Based on the ruling reflected in the confirmation order, there was no dispute of material fact that could result in the NBK claims being disallowed. Summary judgment in favor of NBK overruling the objections was therefore justified.

6. The symmetry breaker here is that the Trustee's claim objections are consistent with the confirmed plan. An order sustaining the Trustee's objections would not require rulings expressly or implicitly at odds with the plan or confirmation order. 2425 WL LLC's objection to NBK's claim would have been.

7. Further, an order sustaining the Trustee's objections is not required as the result of the confirmed plan. As indicated above, the Trustee did not advance the argument that the confirmed plan required sustaining the Trustee's objection. If *the Claimants* want to affirmatively argue that the Trustee's claim objections should be sustained on that basis—rather than the basis asserted by the Trustee—they need to do so. An appellate order vacating the confirmation would not then unwind the order sustaining the objection to claim. An order sustaining the Trustee's objections on those grounds should expressly indicate that it was on the motion of the Claimants and at their request.

**C. Mr. Choudhri's unsubstantiated health issues do not constitute cause to further delay the hearing on the Trustee's claim objections.**

8. The Claimants assert that Mr. Choudhri was unable to help prepare for the hearing on September 5, 2024, and will be unable to attend the hearing on September 6, 2024, due to health reasons. The health issue was not described and is controverted by requests by Mr. Choudhri to meet on September 5. Nor was any reason provided for the failure to prepare during the other 90+ days the claim objections have been pending or the failure to respond to the Trustee's discovery written discovery served on July 30, 2024. [See ECF Nos. 692-25, 692-26, 692-27].

9. The Trustee filing his witness and exhibit list hours *before* the time required by the Bankruptcy Local Rules is not a substantial change. Nearly all of the additional exhibits filed in connection with the Trustee's witness and exhibit list regarding Claim No. 7 were either (a) referenced in the written discovery served on 2425 WL LLC on July 30, 2024 [*see* ECF Nos. 692-25, 692-26, and ECF No. 692-27] or are documents reflected in 2425 WL LLC's witness and exhibit list filed in advance of the July 24, 2024, scheduled hearing. The only other proposed exhibits are (a) ECF No. 692-15 reflecting a drawing by Azeemeh Zaheer describing the Debtor's corporate structure, which tracks other corporate organization documents previously filed, (b) ECF No. 692-20 reflecting the notice of rejection of the Stage Stores/Specialty Retailers lease with the Debtor, and (c) ECF No. 692-21 the notice of foreclosure sale by NBK. None of these are shocking new facts for which a continuance is required.

10. Nor is the Trustee's designation of Azeemeh Zaheer and Christopher Wyatt as witnesses a reason for a continuance. As with the exhibits, those witnesses were designated by the Trustee within the time required by the Bankruptcy Local Rules. Their anticipated testimony is along the lines of what the Trustee alleged in his objection to Claim No. 7 and omnibus reply. None of that changes what 2425 WL LLC or Mr. Choudhri would need to prove to establish Claim No. 7.

11. Ultimately, it is clear that the failure of 2425 WL LLC and Mr. Choudhri to prepare for the Trustee's claim objection is the real reason for the requested continuance. Perhaps 2425 WL LLC and Mr. Choudhri believed that Mr. Choudhri's testimony could sow enough doubt for a non-sanctionable appeal to further delay things. A finding that the testimony of two witnesses corroborated by documents is more credible would not suffice. But if 2425 WL LLC did not want the Trustee to continue to develop the factual basis for his claim objections, that was well within

its power. All that was needed was to go forward on July 24, 2024, when the matter was originally set. Instead, the Claimants requested and received more time to prepare. The Trustee did the same.

**D. The adversary rules do not apply.**

12. As set out in the Trustee's omnibus reply [ECF No. 632], the adversary rules do not apply to the Trustee's objection to Claim No. 7. The Trustee is not challenging 2425 WL LLC's lien, but rather the underlying obligation reflected in the purported note (the "Purported Note"). That still matters for at least two reasons: (a) 2425 WL LLC is challenging the confirmed plan on appeal for, among other reasons, the treatment of insider claims and (b) the likely attempt to use the claim defensively on claims that the Trustee anticipates bringing against insiders.

13. The asserted lien, on the other hand, does not matter. The priority of the asserted lien is no longer in dispute because of the Court's dismissal with prejudice of 2425 WL LLC's subordination adversary proceeding without any appeal. The property to which the asserted lien attached has been sold free and clear of that lien. The proceeds have been distributed from the estate to the liquidation trust and disbursement account according to the plan free and clear. The relevance of 2425 WL LLC's purported deed of trust is simply that it was created in 2021 and the Purported Note claims to be of even date.

14. 2425 WL LLC's desire to impose the adversary rules comes down to nothing but a desire to delay, obfuscate, and increase costs. There is nothing that the adversary rules would impose that 2425 WL LLC could not have obtained through discovery. It did not seek to do that because that is not why it is seeking the imposition of the adversary rules. As indicated above, all 2425 WL LLC needs to establish is that the Purported Note is valid. Whatever witnesses it needs to do that are the same irrespective of the evidence presented by the Trustee.

## **CONCLUSION**

15. Based on the foregoing, and other arguments presented at any hearing on the Motion, the Trustee respectfully requests that the Motion be denied and the Trustee be granted such other and further relief as justice requires.

Dated: September 6, 2024

Respectfully submitted,

SHANNON & LEE LLP

/s/R. J. Shannon

Kyung S. Lee (TBA No. 12128400)

R. J. Shannon (TBA No. 24108062)

2100 Travis Street, STE 1525

Houston, TX 77002

Telephone: (713) 714-5770

Email: klee@shannonleellp.com

rshannon@shannonleellp.com

*Counsel to Christopher R. Murray, Trustee*

## **CERTIFICATE OF SERVICE**

I hereby certify that on September 6, 2024, the forgoing document was served through the Court's CM/ECF System on all parties registered to receive such service, including the following parties:

H. Gray Burks IV

BURKSBAKER, PLLC

950 Echo Ln, Suite 300

Houston, TX 77024

*Attorney for 2425 WL LLC, Ali Choudhri,  
and Jetall Capital, LLC*

/s/R. J. Shannon

R. J. Shannon

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

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In re:

GALLERIA 2425 OWNER, LLC,

Debtor.

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Chapter 11

Case No. 23-34815

**ORDER DENYING EMERGENCY MOTION TO TERMINATE OR DENY  
OBJECTIONS TO CLAIM AS MOOT OR ALTERNATIVELY CONTINUE HEARINGS**

Before the Court is the Emergency Motion to Terminate or Deny Objections to Claim as Moot; or Alternatively Continue Hearings [ECF No. 705] (the “Motion”). Christopher R. Murray, in his capacity as trustee of the liquidation trust in the above-captioned case, filed an objection to the Motion (the “Objection”). The Court has considered the Motion, the Objection, the statements of counsel and evidence submitted at any hearing on the Motion, and the entire record in the above-captioned case and has determined that there is insufficient basis to grant the relief requested in the Motion.

**IT IS THEREFORE ORDERED** that the Motion for Summary Judgment is **DENIED**.

Proposed Order Submitted By:

/s/R. J. Shannon

R. J. Shannon

Shannon & Lee LLP

2100 Travis Street, STE 1525

Houston, TX 77002

rshannon@shannonleellp.com

713-714-5770



**ENTERED**

September 09, 2024

Nathan Ochsner, Clerk

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**IN RE:**

**GALLERIA 2425 OWNER, LLC,**

**Debtor.**

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**CASE NO: 23-34815**

**CHAPTER 11**

**ORDER DISALLOWING PROOF OF CLAIM AND  
REFERRAL TO UNITED STATES ATTORNEY**

Filing a false Proof of Claim is a federal crime.<sup>1</sup> For the reasons so stated the Court holds that Proof of Claim 7, and the Amended Claim 7-2 signed by Ali Choudhri as manager of 2425 WL, LLC is a false Proof of Claim, the claim is disallowed in its entirety and the Court refers this matter to the United States Attorney for investigation.

On March 21, 2024, Proof of Claim Number 7 was filed by 2425 WL, LLC in the amount of \$22,968,231.58. On June 3, 2024, the Chapter 11 Trustee, Christopher R. Murray filed his Objection to Claim No. 7 (ECF No. 402). On June 28, 2024, the claim was amended (Claim 7-2) for the same amount of \$22,968,231.58. Trial was held on September 6, 2024, evidence was introduced, and witnesses testified.

Proof of Claim 7-2 attaches as documentary evidence a Promissory Note (ECF No. 692-2) dated May 23, 2018, and a Deed of Trust (ECF No. 692-3) dated May 23, 2018, that was recorded on May 11, 2021. The Deed of Trust contains an undated notary acknowledgment, the attachments to the Proof of Claim also include a Settlement Statement (ECF No. 692-4) with a settlement date of May 23, 2018. Claim 7-2, the Promissory Note and Deed of Trust are all signed by Ali Choudhri. The Promissory Note and Deed of Trust are fraudulent. They were not created on May 23, 2018, and were created at a date substantially thereafter but prior to the recording date on the Deed of Trust of May 11, 2021.

The false secured Proof of Claim 7-2 is based on the Settlement Statement attached thereto that arises out of a real estate transaction that is shown by exhibits at ECF No. 692-8 to ECF No. 692-12. On May 23, 2018, Galleria 2425 Owner, LLC as borrower and National Bank of Kuwait, S. A. K. P., New York Branch ("NBK) as lender loaned \$51,675,000.00 to the borrower for the purchase of real estate. The Promissory Note (ECF 692-9) is secured by a Deed of Trust (ECF 692-10) against the subject real estate. In addition to the NBK promissory note there was an additional Mezzanine Loan Agreement between Galleria 2425 JV, LLC as borrower and Naissance Galleria, LLC as lender in the amount of \$16,100,000.00 (ECF 692-12). These various transactions are incorporated into the Settlement Statement, attached to the false Proof of Claim.

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<sup>1</sup> 28 U.S.C. § 152 "A person who – ... (4) knowingly and fraudulently presents any false claim for proof against the estate of a debtor or used any such claim in any case under title 11, in a personal capacity or as or through an agent, proxy or attorney; ... shall be fined under this title, imprisoned not more than 5 years or both."

As indicated by the Settlement Statement the borrower was Galleria 2425 Owner, LLC (the debtor), the Seller was 2425 WL, LLC (the claimant) and the lender was NBK. The Contract Sales Price (Line 401) is \$79,500,000.00 and after payment of all outstanding debits and credits the Seller and claimant received cash of \$13,720,254.15 (Line 603). The false Proof of Claim 7-2 is based on line 518 of the Settlement Statement which indicates a “Seller Credit to Buyer” of \$14,730,332.38, which when netted against debits to the Buyer in the settlement statement leads to the cash payment to the Seller and claimant of \$13,720,254.15. Somehow line 603 of the Settlement Statement leads the claimant to make the fanciful, and wholly false claim that the claimant who received over \$13 million in cash has an additional claim against the debtor for over \$14 million dollars plus accumulated interest as if it lent the debtor this sum, when it did not.

The actual May 23, 2018, transactions were authorized and signed by Azeemeh Zaheer (“Zaheer”) in her various capacities including the representative(s) of Galleria 2425 Owner, LLC, Naissance Galleria, LLC, Naissance Capital Real Estate, Ltd, and Galleria 2425 JV, LLC. On this date she was the only person who could have authorized these transactions, and no other persons had authority to bind these entities. Zaheer appeared under subpoena and testified that the Promissory Note and Deed of Trust signed by Choudhri that are attached to the Proof of Claim 7-2 did not exist as of May 23, 2018, their purported date, and that even if they had existed, she would have been the only person authorized to enter such transactions. Choudhri had at that time no authority to sign these documents even though they purported to be signed on that date.

A plain reading of the Settlement Statement indicates that the Seller and claimant received over \$13 million dollars from the sales transaction of May 23, 2018, and did not have a claim against the debtor for over \$14 million plus accumulated interest. There could have been no consideration paid by the claimant for the Promissory Note or the Deed of Trust as alleged in Claim 7-2. The claimant received funds and did not and could not have paid any monies in the subject transaction. The Court holds that on May 23, 2018, the Promissory Note and Deed of Trust attached to the false Proof of Claim 7-2 did not exist, that they were created without the payment of any consideration by the claimant and that they were fraudulently created after the fact by Ali Choudhri, who controls the claimant.

If the testimony of Zaheer was not damning enough to Choudhri, Christopher Wyatt (“Wyatt”) also testified under subpoena at the hearing. Wyatt was the Chief Operating Officer of Jetall Companies, Inc from July of 2019 to October of 2020. Jetall is also controlled by Ali Choudhri. Wyatt testified that Choudhri requested that he draft a Promissory Note and Deed of Trust in order to secure leverage against NBK due to a bankruptcy proceeding that severely impacted the financial standing of the debtor.<sup>2</sup> Wyatt was concerned about the request, conducted an independent investigation and determined that the claimant did not have a valid claim as contained in the false Promissory Note and false Deed of Trust and that any documents he drafted would be fraudulent. The Court finds both Zaheer and Wyatt to be incredibly competent witnesses.

This Court now has a long history with Ali Choudhri. This Court has held that his truth and veracity are questionable in prior proceedings in this case. The Court after hearing finds again that

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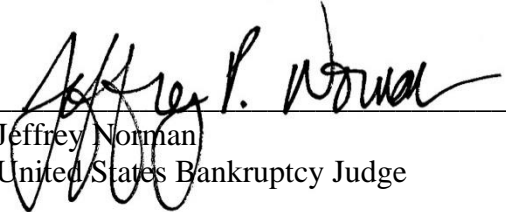
<sup>2</sup> Case No. 20-32564, Stage Stores, Inc.

his truth and veracity are questionable, unfortunately entirely questionable. He did not appear for this hearing, claiming again, falsely, that he was ill.<sup>3</sup> The Court understands his failure to appear, as the only witnesses before the Court testified that Choudhri was of questionable conduct and created false documents. There are questions that Choudhri does not want to answer and if he had appeared, the Court would have forced him to answer them. The Court believes that Choudhri is a forger and a liar, but he at least is smart enough to avoid a Court hearing where he would be forced to testify and face what is now very evident to this Court.

The Court sustains the Chapter 11 Trustee's Objection at ECF No. 402, and orders that Proof of Claim 7-2 is disallowed in its entirety. This matter is referred to the United States Attorney for investigation.

**SO ORDERED.**

SIGNED 09/09/2024



Jeffrey P. Norman  
United States Bankruptcy Judge

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<sup>3</sup> Choudhri has made this claim in various matter set before this Court.



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1           HOUSTON, TEXAS; FRIDAY, SEPTEMBER 6, 2024; 9:00 AM

2                               (Call to Order)

3           THE COURT: All right. Good morning. It is 9  
4 a.m., and we're on the record for Friday, September the 6th,  
5 2024. There are a number of matters set at 9 a.m., but they  
6 all revolve around Galleria 2425 Owner LLC, 23-34815. Let  
7 me take appearances of counsel please.

8           MR. SHANNON: Good morning, Your Honor. RJ  
9 Shannon on behalf of Christopher Murray, formerly the  
10 Chapter 11 trustee and now the trustee of the liquidated  
11 trust pursuant to the plan.

12           THE COURT: Thank you, Mr. Shannon.

13           MR. BURKS: Good morning, Judge. My name is Gray  
14 Burks, B-U-R-K-S, on behalf of the claimants on the various  
15 set of claims and objections.

16           THE COURT: All right. Thanks, Mr. Burks. Mr.  
17 Shannon, I'm -- oh, other parties? Come on. Come to the  
18 podium please. That's what it's there for.

19           MR. POPE: Good morning, Your Honor. James Pope  
20 here on behalf of Jetall Companies.

21           THE COURT: Thank you, Mr. Pope.

22           MR. POPE: Thank you.

23           MR. TROOP: Good morning, Your Honor. On behalf  
24 of National Bank of Kuwait Andrew Troop, Charles Conrad, and  
25 Patrick Fitzmaurice. Nice new clock.

1           THE COURT: Thank you. It's specifically bought  
2 by me. The government did not pay for it. It is an atomic  
3 clock so it registers exactly the time because I am always  
4 punctual. So you could rely on that clock. I took the  
5 other clocks down. They were horrible. But it's the exact  
6 time. You could look at your Apple watch. It'll match up.  
7 It connects to the atomic clock every night. It's always  
8 going to be right. All right. Thank you, sir. Thank you  
9 for noticing.

10           MR. TROOP: And for those of you who weren't here,  
11 I believe on the date of the confirmation hearing your other  
12 clock broke at the end of the day, so --

13           THE COURT: At \$65 from Amazon, it's the best  
14 purchase I've ever made. Other appearances?

15           MR. TANG: Your Honor, I'll just come up here.  
16 Good morning, Your Honor. How are you? David Tang. We  
17 were subpoenaed. "We" being Azeemeh Zaheer. She was  
18 subpoenaed to be here today, so just wanted to announce that  
19 we're here for a subpoena, Your Honor.

20           THE COURT: Thank you.

21           MR. TANG: Thank you, Your Honor.

22           THE COURT: Mr. Shannon, I'm assuming that you are  
23 ready to go?

24           MR. SHANNON: Yes, Your Honor.

25           THE COURT: Okay. So let me address I guess ECF

1 705, which Mr. Burks filed at 10:05 last night and I saw for  
2 the first time this morning about 6:00. I didn't see your  
3 response until I got to the office. But I'm going to deny  
4 ECF Number 705, but I think I need to at least read on the  
5 record why I'm going to do that. So you can have a seat,  
6 Mr. Shannon. I'll read onto the record why I'm going to  
7 deny his motion and then we can proceed in whatever order  
8 you see fit, all right?

9 Mr. Burks, when I read your motion about 6:00 this  
10 morning, I was -- a couple of things came to mind right off  
11 the bat. The first is that this is the second request for a  
12 continuance and that you agreed to the date and the time of  
13 the hearings today. The second thing is what could you have  
14 not known before 10:05 p.m. last night when you filed this  
15 motion? If Mr. Choudhri was sick, he was sick well before  
16 10:05 p.m., less than 11 hours before this hearing.

17 You're a smart guy. You're aware of the plan.  
18 You objected to it. You have appealed the confirmation  
19 order. So the fact that you may be surprised by its terms  
20 and how I would rule is just beyond me, okay? All right? I  
21 expect, Mr. Burks, you to vigorously represent your client,  
22 okay? What I don't expect after I read the response from  
23 Mr. Shannon is for you to take inconsistent legal positions,  
24 okay?

25 And I say this with all due respect, and I really



1 do mean it with all due respect because I've known you for a  
2 long time, okay? If you want to damage your reputation with  
3 the Court, feel free to do so, but I've got a long memory  
4 and I don't think it suits you. I really don't, okay? So  
5 take that as a warning. Take that as advice. But you're  
6 going to appear in front of me for a long period of time.  
7 And if you want to make arguments that are rational and  
8 reasonable, I want to hear them. But if you want to make  
9 arguments that aren't rational and aren't rational and  
10 aren't reasonable, that doesn't suit you. It really  
11 doesn't, okay? So the motion's denied. All right, Mr.  
12 Shannon. How do you want to proceed?

13 MR. SHANNON: Thank you, Your Honor. I think we  
14 would start with the trustee's objection to Claim Number 7,  
15 and that is Docket Number 402.

16 THE COURT: All right.

17 MR. SHANNON: It's the objection.

18 THE COURT: So you have the burden, so I'll let  
19 you basically -- if you want to make your opening argument,  
20 then I'll let anyone respond to it who wants to respond.

21 MR. SHANNON: Yes, Your Honor. And if I can share  
22 the screen...

23 THE COURT: Sure. I'll give it to the podium. It  
24 should be connected now.

25 MR. SHANNON: Your Honor, I'll just kind of start

1 with the -- what the relevant filings are here. Proof of  
2 Claim Number 7 was filed timely. It is by 2425 WL LLC.  
3 Subsequently to the trustee's objection, there was an  
4 amended proof of claim filed that did add some additional  
5 information. There's no objection to that additional  
6 information that was provided. Essentially what was -- the  
7 additional information was a -- was a copy of the note and  
8 was a settlement statement.

9 Again, the trustee objected. That is at ECF  
10 Number 402. 2425 WL responded to the trustee's objection.  
11 That's at ECF 595. And the trustee filed an omnibus reply,  
12 and that's at 6 -- ECF Number 632. The two witness and  
13 exhibit lists that are active for this claim objection are  
14 the trustee's witness and exhibit list at ECF Number 692 and  
15 2425 WL's witness and exhibit list at ECF Number 637. That  
16 one was filed back in (indiscernible).

17 The asserted basis of Claim Number 7 is a  
18 purported note that was dated May 23, 2018. It's also  
19 secured by a deed of trust that allegedly of the same date.  
20 Those two things reference each other, and particularly the  
21 note references the deed of trust. According to the  
22 response, those are allegedly part of the same May 23, 2018  
23 transaction that you've heard a lot about in this case.

24 There was -- as part of that May 23, 2018  
25 transaction, there was property sold from the claimant here

1 in 2425 WL to the debtor. There was a \$51.6 million loaned  
2 by MBK. There was also \$16.1 million loaned by Naissance  
3 Galleria as a mezzanine financing to the sole member of the  
4 debtor. And the last part of that transaction was that  
5 there was \$13.7 million of cash that went to the claimant  
6 2425 WL. So that's all part of that transaction that  
7 everyone agrees to.

8 Really what the trustee says is this note was not  
9 part of it. This note did not exist at that time. It was  
10 not part of that transaction. Not only does the response  
11 say that this claim and this note were part of that  
12 transaction. We have that from Mr. Choudhri's testimony at  
13 the January 31 hearing before this court.

14 So the trustee's objection really breaks down into  
15 three different parts. The first objection is that the  
16 purported note is unenforceable because there was no  
17 consideration provided. What we're going to see in  
18 evidence, Judge, there's first going to be evidence by the  
19 documents. There's the settlement statement for that sale  
20 of that property and the related financing that Mr. Choudhri  
21 pointed to back on May -- or back on January 31.

22 He pointed to that and said that's where it is.  
23 It's shown there. I think the evidence is going to show it  
24 does not show that. The other transaction documents from  
25 that May 23, 2018 transaction also indicate that there is no

1 other debt. Now that's circumstantial evidence, Judge.

2 It's not necessarily binding, but it shows that at the time  
3 the parties did not have -- did not contemplate this as part  
4 of that transaction.

5 The deed of trust that is attached to the proof of  
6 claim, and we have it as a separate exhibit as well that I  
7 believe will be admitted, also says it's a (indiscernible)  
8 date. I think when we look at the document that you're  
9 going to see that that document, that deed of trust was  
10 created in 2021.

11 The next groups of documents are going to show is  
12 that the -- every other document that was executed in  
13 connection with that May 23, 2018 transaction was signed  
14 differently than this purported note and this purported deed  
15 of trust. They were all signed by Azeemeh Zaheer and they  
16 are documents that establish why that was the case. The  
17 note and deed of trust that are behind Proof of Claim Number  
18 7 were signed by Mr. Choudhri.

19 The other thing the documents are going to show is  
20 that Mr. Choudhri did not have any authority to sign on  
21 behalf of the debtor until 2021. And I say that we're going  
22 to get these documents in, and most of them have been  
23 admitted to. The trustee served written discovery. There  
24 was no response. There were requests for admissions, copies  
25 of the documents were attached, and again, there was no

1 response to those documents. The genuineness of them has  
2 been admitted, and some questions about those documents have  
3 been admitted.

4 In addition to the documents -- and that's what we  
5 were going to go forward with and -- on July 24th, since  
6 then the trustee's also found some witnesses that can speak  
7 to the existence of that note prior to -- I believe it's  
8 going to be October of 2020. We know the testimony's going  
9 to say that wasn't there beforehand, wasn't there on that  
10 date. It was not there in 2018. Again, I think you're  
11 going to hear testimony to that effect.

12 The second basis for the trustee's objection is  
13 that even if we're wrong about that, even if this document  
14 was created in 2018, even if that is the case and it was  
15 just secret and it was just hidden and no one knew about it  
16 and it wasn't in those documents, it would still be  
17 unenforceable because Mr. Choudhri did not have authority to  
18 sign on behalf of the debtor. Again, it's going to be  
19 established by documents, and it's going to be established  
20 by testimony, in particular the documents that deal with the  
21 corporate authority of the debtor.

22 The third basis for the trustee's objection is  
23 that the purported note is unenforceable because the  
24 doctrine of quasi estoppel should apply and should prevent  
25 2425 WL from even being able to assert that the basis of

1     this note was a loan in connection with that May 23, 2018  
2     transaction. Again, it's going to be shown in the  
3     documents, and I think you're going to get some of that from  
4     the testimony of Ms. Zaheer. The documents, again the  
5     settlement statement, what was said in there, and that was  
6     executed by 2425 WL.

7             You're going to see that it was important to the  
8     other lenders in this transaction that they did -- that the  
9     other debt that was part of that transaction mattered to  
10    them, and that's going to be shown in those documents. It's  
11    going to be shown in an internal NBK loan memo that Mr.  
12    Choudhri pointed to back in January 31 of this year for this  
13    court. He pointed to that and said that describes the  
14    transaction. When you look at that document that Mr.  
15    Choudhri pointed to back then, it doesn't have this note  
16    that 2425 WL is now asserting is the basis of their claim.

17            And the same thing with the mezzanine loan  
18    agreement. There were again limitations on what was allowed  
19    to be -- what debt was allowed to be, what liens were  
20    allowed to be on the property. So those are the bases of  
21    the objection, Your Honor.

22            I do want to say that one of the things that  
23    puzzled me in this was why. Why any of this? And I think  
24    we've kind of -- this is what I think the evidence is going  
25    to show. It's not entirely the basis of the objection, but

1 I think it's going to be what the evidence shows. It's not  
2 the seller credit in the settlement statement, which is  
3 where -- is what was pointed to as the basis of the claim,  
4 is that was Mr. Choudhri's equity in the property. Went  
5 through this transaction, that was the equity.

6 What happened was back in 2020, two years  
7 thereabouts after the transaction where the debtor acquired  
8 the property from the claimant here, there was the main  
9 tenant of the building Stage Stores and its affiliated  
10 Specialty Retailers, they filed bankruptcy and they rejected  
11 the lease with the property. That caused all kinds of  
12 problems for the debtor.

13 I don't know if it's in evidence in front of you  
14 up until now. It will likely be today. But it caused the  
15 debtor not to be able to service its debt to NDK, to not be  
16 able to make its payments, and it reduced the value of the  
17 property. After that I think what the evidence is going to  
18 show that Mr. Choudhri sought to fabricate obligations that  
19 were secured by junior liens. I think the natural inference  
20 from that evidence will be that they did that to hinder  
21 efforts to obtain the property by NBK and by other parties.

22 Ms. Zaheer was pressured to do that, and she  
23 refused to participate. Later in 2021 Gallery West Loop  
24 Investments 2, which is up the chain of the corporate  
25 ownership of the debtor, that became the managing member of

1 the sole member of the debtor. So it became in control.

2 And Mr. Choudhri controlled that entity.

3 After that happened, that's when this note, this  
4 purported note underlying the claim was created. It's when  
5 the deed of trust was created after they had these -- this  
6 dispute brewing with NBK. Later in 2021 the claimant here  
7 2425 WL sought to foreclose on that second lien, the one  
8 that was created by the deed of trust, and they even caused  
9 a secret unrecorded trustee's deed to issue in that year.

10 While that litigation with NBK was getting  
11 underway, it was never reported, but that was filed. And I  
12 think the goal of all of that was to delay and tie up the  
13 property in the event that NBK was actually successful in  
14 foreclosing. They weren't. But also to gain leverage in  
15 the bankruptcy.

16 Based on all of that, judge, and based on the  
17 arguments, Claim Number 7 should be disallowed. This  
18 purported note that underlies the claim did not create and  
19 doesn't reflect an enforceable obligation against the  
20 debtor. This specific provision of the bankruptcy code that  
21 it should be disallowed under is Section 502(b)(1), and that  
22 says that a claim should be disallowed if it is  
23 unenforceable against the debtor and property of the debtor.

24 I'll also say, Judge, I think it kind of changes a  
25 lot of the character of what happened in this case, but



1     that's not really an issue for today. The issue for today  
2     is, is that note an enforceable obligation. Thank you, Your  
3     Honor.

4             THE COURT: Thank you. Mr. Baker?

5             MR. BURKS: Your Honor, although I disagree with  
6     the recitation of what this case is about, and although I  
7     take to great heart and I understand exactly what the Court  
8     is saying, the bottom line is that we can't defend this  
9     objection to claim (indiscernible). We can't.

10            It's true I took the position on July 25 that the  
11     complaint was not binding, it was subject to appeal, and it  
12     was not -- the effective date had not occurred. There were  
13     contingency on the sale whether or not it was actually  
14     (indiscernible) or not, and also, was not substantively  
15     consummated. But things have changed in the last five  
16     weeks, and I cannot defend this objection to claim, Judge.

17            Number one, the sale completely changed. It was  
18     not sold to the primary buyer. It was sold to the backup  
19     buyer. That changed what effective provisions of the plan.  
20     You see the notice of sale. That's number one. Number two  
21     you see NBK's notice of effective consummation and effective  
22     date. And number three, you see a plan provision that says  
23     that this claim is cancelled and extinguished.

24            I'm standing here in -- I'm standing in front of  
25     you listening to the argument on a proof of claim that's

1     been cancelled and extinguished. I can't defend that  
2     because it's cancelled and extinguished. I disagree with  
3     the recitations. I disagree with the conclusions. I wish  
4     my client was here, but the bottom line is whether he's sick  
5     or not, whether the adversary proceeding should be -- have  
6     been invoked, I'm stuck with the plan that has cancelled and  
7     extinguished by client's claim.

8             Judge, you said something about zealous  
9     representation. I've read the case law on the effective --  
10    binding effect of a plan that's subject to appeal, and I was  
11    hoping that I could make a distinction legally between those  
12    things in a plan that are subject to statutory limitations  
13    such as cash collateral, such as credit, and claims  
14    allowance. But from what I think about it, and frankly your  
15    ruling yesterday, I told him -- I got on the phone at 3:30  
16    with Mr. Shannon and said I'm -- my claims are extinguished.  
17    He said we're going forward anyhow.

18            I said, well, do you want to think about it? Do  
19    you want to talk about it? Do you want to continue the  
20    hearing? No. Okay. But I'm standing in front of you with  
21    a cancelled and extinguished claim. So I'm not sure what  
22    I'm supposed to do in defense of my client when his claim  
23    has been cancelled and extinguished.

24            Remember what the objection's saying. The prayer  
25    for -- the requested relief is disallow the claim in full.

1 It's been cancelled and extinguished. I don't know what  
2 justiciable issue you have in front of you now. Is the  
3 going to be reversed (indiscernible)? I don't know. I hope  
4 so. There are a lot of different points. There's certainly  
5 affirmed on some issues and reversed on the liability issue,  
6 frankly. The release issue, the gatekeeper issue, but with  
7 respect to the sale no. With respect to the disallowance or  
8 cancelling the claim there are no.

9 But judge I have an obligation to tell you that  
10 circumstances have changed. I didn't flip-flop. I flipped  
11 on what the facts were a month ago and I (indiscernible) --

12 THE COURT: My point to you, Mr. Burks, was you  
13 knew this five weeks ago. You've already admitted you knew  
14 it five weeks ago, yet you file a motion at 10:05 p.m. less  
15 than 11 hours before the hearing. That's what I don't  
16 understand. Okay? And there's no excuse for that. Okay?  
17 You can't make one up. All right?

18 MR. BURKS: I'm not trying to excuse that.

19 THE COURT: Okay.

20 MR. BURKS: I'm not trying to excuse that. I am  
21 trying to tell you that I stand before you unable to defend  
22 my client because the claims are cancelled and extinguished.

23 THE COURT: All right. Thank you.

24 MR. BURKS: That's all I can --

25 THE COURT: All right.

1 MR. BURKS: That's all I can tell you, Judge.

2 THE COURT: All right. Thank you. Mr. Shannon,  
3 you may call your first witness.

4 MR. SHANNON: Thank you, Your Honor. And I'll  
5 start, Your Honor, by seeking the admission of some exhibits  
6 that have been at least admitted as parts through discovery.  
7 I'll seek the admission of Exhibits 1 -- and these are at  
8 Docket Number 692, 692-1 through 692-14.

9 MAN: (Indiscernible).

10 THE COURT: Mr. Burks, do you have any objection  
11 to the entry of 692-1 through 692-14? And if you need a few  
12 minutes to review them you can.

13 MR. SHANNON: Okay. And then --

14 MR. BURKS: (Indiscernible).

15 THE COURT: All right. Go ahead, Mr. Burks.

16 MR. BURKS: Your Honor, I do not object to the  
17 admission of these exhibits as far as providing the  
18 testimony that he -- counsel wants to elicit from them.  
19 Obviously I reserve objections to that. I do want to tell  
20 this court that we've got a witness that I am totally  
21 unprepared. And without knowing what these witnesses will  
22 testify to, I am totally unprepared.

23 I'm being told that we do have a justiciable issue  
24 in front of you. I thought you did not. So I'll do the  
25 best I can on cross-examination and on objections, but I am

1     totally uncertain why we're going forward with an  
2     evidentiary hearing where you don't have an issue of  
3     controversy in front of you.

4             THE COURT: All right. Thank you. All right.

5             MR. BURKS: Thank you.

6             THE COURT: Exhibits 1 through 14 are admitted.

7             (Exhibits ECF 692-1 through ECF 692-14 admitted  
8     into evidence)

9             MR. SHANNON: Yes, Your Honor. And we had just  
10    talked about 16 -- again, Docket Number 692-16 through 27 as  
11    well.

12            THE COURT: So are there any objections to those,  
13    Mr. Burks?

14            MR. BURKS: No objection that I can make today,  
15    Judge.

16            THE COURT: All right. Then they're admitted.  
17    Thank you.

18            (Exhibits ECF 692-16 through ECF 692-27 admitted  
19    into evidence)

20            MR. SHANNON: Thank you, Your Honor. I'd like to  
21    call Azeemeh Zaheer.

22            THE COURT: Ms. Zaheer, do you want to come  
23    forward? If you come to the podium, I'll swear you in.  
24    Once I've sworn you in you can be seated in the witness  
25    stand. Please come to this microphone right here, ma'am.

1 Please raise your right hand to be sworn. Do you swear or  
2 affirm to tell the truth, the whole truth, and nothing but  
3 the truth so help you God?

4 THE WITNESS: Yes.

5 THE COURT: You need to speak up, ma'am.

6 THE WITNESS: Yes.

7 THE COURT: Okay. Come on up. Be seated. You're  
8 soft-spoken. Make sure you speak into the microphone. Mr.  
9 Shannon, you may proceed.

10 MR. BURKS: Your Honor, I object to the calling of  
11 this witness. There is -- Your Honor, I have two objections  
12 to the calling of this witness. The first one only is on  
13 the July 24 witness and exhibit list she was not included.  
14 I had no notice that she was going to be called as a witness  
15 until two days ago.

16 I'm talking about not being able to prepare for  
17 what a witness may or may not say. I had no idea that she  
18 was being called even though counsel had since, well, before  
19 July 24th and all that time leading up to that. I have a  
20 second objection, but I'll wait for your ruling on that  
21 objection, Your Honor.

22 THE COURT: I'll overrule that objection. Go  
23 ahead. Make your second objection.

24 MR. BURKS: The testimony which she's about to be  
25 asked to elicit would go to what Mr. Ali Choudhri knew or

1 did or didn't do and what his intent was. And there --

2 THE COURT: I think you can make those objections  
3 during the examination.

4 MR. BURKS: (Indiscernible). Thank you.

5 THE COURT: Mr. Shannon, go ahead.

6 MR. TANG: Your Honor, may I have that table to  
7 counsel's table?

8 THE COURT: Sure. Come on up.

9 MR. TANG: Just in case I need to make objections.

10 THE COURT: That's fine.

11 MR. TANG: Thank you, Your Honor.

12 THE COURT: Just stay next to a microphone and  
13 stand up and be loud.

14 MR. TANG: Okay, Your Honor. I'll sit over here.

15 THE COURT: All right.

16 MR. TANG: Thank you, Your Honor.

17 DIRECT EXAMINATION OF AZEEMEH ZAHEER

18 BY MR. SHANNON:

19 Q Good morning, Ms. Zaheer. Can you spell your name for  
20 the record? First and last.

21 A A-Z-E-E-M-E-H. Last name is Zaheer, Z-A-H-E-E-R.

22 Q And Ms. Zaheer, you are here understand a subpoena,  
23 correct?

24 A That's correct.

25 Q I guess just for the record back in July 24 of this

1 year, were you in the country?

2 A July?

3 Q 24, 2024.

4 A No.

5 Q And where were you at, Ms. Zaheer?

6 A I think I was in Egypt.

7 Q Thank you. Ms. Zaheer, if you could just -- I want to  
8 get an idea of your background and your knowledge of things  
9 we're going to talk about. Could you describe any  
10 background or connection you have with Galleria 2425 Owner  
11 LLC?

12 A Yes. In 2018, we structured a transaction to acquire  
13 2425 and secured lending from NBK. I brought lending in  
14 through a mezzanine entity I created called Naissance  
15 Galleria and acquired the asset.

16 Q And when you say you set it up, were you acting again  
17 through that entity Naissance Galleria? Is that what you  
18 said?

19 A Naissance Galleria is the mezzanine lender.

20 Q Okay. And was it created for that purpose?

21 A Sole purpose.

22 Q Okay. And did you have any connection with Galleria  
23 2425 JV LLC?

24 A Yes.

25 Q And how does that fit in with the -- with -- I'm going



1 to refer to Galleria 2425 Owner LLC as the debtor.

2 A Okay.

3 Q And so how does Galleria 2425 JV fit in with the  
4 debtor?

5 A Galleria 2425 JV was the sole owner of the debtor.

6 Q Okay. And so who -- or if you know, who controlled or  
7 who had ownership interest in Galleria 2425 JV?

8 A The ownership interest was Naissance Capital Real  
9 Estate based in Delaware and GW2 as the limited partner.

10 Q And when you say GW2, do you -- are you referring to  
11 Galleria West Loop Investments 2?

12 A That's correct.

13 Q Okay. And were you involved in setting up that  
14 corporate structure?

15 A I was.

16 Q And how were you involved in doing that?

17 A I structured it with our law firm.

18 Q Okay. And did you have conversations with anyone else  
19 that was involved with the debtor in doing that structure,  
20 setting up that structure?

21 A Yes, of course. Brad Parker, Ali Choudhri, who was  
22 instructing Brad Parker.

23 Q Okay. And so you talked about that transaction. Are  
24 you familiar with the transaction with NBK and acquiring the  
25 property? Do you know what I'm talking about when I say

1     that?

2     A     Yes.  No, 100 percent.  I'm very familiar with it.  It  
3     was a property that we acquired I structured with our law  
4     firms and...

5     Q     And did you acquire that property from 2425 WL LLC?

6     A     Yes.

7     Q     Okay.  And there was financing in connection with that  
8     acquisition of the property, correct?

9     A     That's correct.

10    Q     And just so the record's clear, when you're speaking of  
11    the property, which property are you talking about?

12    A     2425 West Loop South.

13    Q     Okay.  And that property -- or what entity actually  
14    held title to that property?

15    A     2425 Owner LLC.

16    Q     Okay.  And that's the entity that I had described as  
17    the debtor before, correct?

18    A     That's correct.

19    Q     Okay.  I want to talk about that financing transaction.  
20    Can you tell me I guess what was part of that financing  
21    transaction to acquire the property?

22    A     The senior lender the National Bank of Kuwait provided  
23    all -- a senior loan for 51 and a half -- 51.2 million and  
24    Naissance Galleria provide a mezzanine loan for 16.1  
25    million.  And that was the two financing vehicles.

1 Q And was there any other financing that was part of that  
2 transaction?

3 A No, absolutely not.

4 MR. SHANNON: I'm going to pull up an exhibit,  
5 Judge. And before it gets admitted...

6 BY MR. SHANNON:

7 Q I'm pointing to your screen right there. Do you see  
8 that up there?

9 A Yes.

10 Q Do you recognize that image?

11 A Yes.

12 Q What is that image?

13 A That's the structure I drew out in your office.

14 Q Okay. And we just described the structure. Is -- does  
15 this basically describe the structure we just talked about?

16 A Yes. It does.

17 Q Okay.

18 A It shows...

19 MR. SHANNON: Okay. Judge, and just for the  
20 record what I pulled up was ECF 692-15. Judge, at this time  
21 I'd ask for Docket Number 692-15 to be admitted.

22 THE COURT: Any objections, Mr. Burks?

23 MR. BURKS: I don't know what it's being admitted  
24 for. I object to that, Judge. I don't know what that is.

25 THE COURT: It's basically a demonstrative of her

1 testimony. Do you have an objection to that?

2 MR. BURKS: Yes, Your Honor.

3 THE COURT: Then I'll overrule the objection.

4 (Exhibit ECF 692-15 admitted into evidence)

5 MR. SHANNON: Thank you.

6 BY MR. SHANNON:

7 Q Ms. Zaheer, on this chart there is a part of the top  
8 there that says AC 14 M. Can you explain what that means?

9 A AC stands for Ali Choudhri, and then he received nearly  
10 \$14 million in cash for the transaction.

11 Q Okay. And was there any equity as part of this deal in  
12 the property after all the financing transactions?

13 MR. BURKS: Objection. No predicate that she  
14 knows the value of the property at the time. She's being  
15 asked was there equity in the value of the property at the  
16 time of the transaction. There's no predicate for that.

17 THE COURT: I'll sustain the objection. You can  
18 ask -- or lay a foundation. Thank you.

19 BY MR. SHANNON:

20 Q Do you have an idea of what the value of the property  
21 was back then in 2018 when this transaction happened?

22 A Yes. The appraisal came in around almost 90 million as  
23 I recall.

24 Q And so if we're going to add up all these numbers, so  
25 52, 16, and 14, do those add up to 92?

1           MR. BURKS:  Objection, Your Honor.  The -- she's  
2   now testifying her value -- her opinion of equity, her value  
3   that she's asserting is based on an appraisal which has not  
4   been admitted into evidence.  She can't do that.

5           THE COURT:  I'll overrule the objection.  Go  
6   ahead.

7   BY MR. SHANNON:

8   Q     Do you need me to reask that question?

9   A     Yeah.  You're just asking if it adds up to this number.  
10  Yeah.

11  Q     So was there any -- based on that appraisal, was there  
12  any additional value in the property that was owned?  Again,  
13  just based on that appraisal.

14  A     Based on the appraisal, yes.  It would be -- the value  
15  would be based on for financing in place and any additional  
16  amount over that left.

17  Q     Okay.  Thank you.  I'm going to talk about this -- the  
18  documents related to that May 23, 2018 transaction.  Are you  
19  generally -- or were you at the time familiar with those  
20  documents?

21  A     Yes.

22  Q     And did you sign those documents on behalf of the  
23  debtor?

24  A     Yes, I did.

25           MR. BURKS:  Objection.  I don't know what "those

1 documents" are at this point.

2 THE COURT: Okay. I sustain the objection. Let's  
3 -- they're already in evidence I'm assuming, but let's go  
4 ahead show them to him.

5 BY MR. SHANNON:

6 Q Okay. Ms. Zaheer, I'm going to pull up Docket 692-7.  
7 And sorry. Let me draw that back. I'm going to pull up  
8 692-8. Can you make that out on the screen? Is that large  
9 enough for you to see?

10 A Yes.

11 Q Okay. And you see at the top there where it says Loan  
12 Agreement dated as of May 23, 2018 among Gallery Owner LLC  
13 as borrower, National Bank of Kuwait SAKP New York branch as  
14 administrative agent, and it continues on after that?

15 A Yes.

16 Q And do you know what this document is?

17 A Yes. This is our loan agreement with the National Bank  
18 of Kuwait.

19 Q Okay. And I'm going to scroll down to the signature  
20 page and I'm going to ask if that's your signature. Pull it  
21 up there. Ms. Zaheer, is that your signature there at the  
22 bottom of that call-out?

23 A Yes.

24 Q And it says that you were signing -- you're at the  
25 bottom, and then above that it says Naissance Capital Real

1 Estate LLC, correct?

2 A That's correct.

3 Q And then above that Galleria 2425 JV LLC.

4 A Yes.

5 Q And then above that is the entity that we referred to  
6 as the debtor, correct?

7 A Correct.

8 Q Ms. Zaheer, why did -- why was it you -- why were you  
9 the one that was signing this document, this loan agreement?

10 A Because I was the general partner. I was the sole  
11 managing member. I am the sole managing member of Naissance  
12 Capital Real Estate. There was the general partner of  
13 Galleria 2425 JV (indiscernible) 2425 Owner.

14 Q And we talked I think before. So Galleria 2425 JV LLC,  
15 it is as exists here. The sole member of the debtor,  
16 correct?

17 A That's correct.

18 Q And then Naissance Capital Real Estate LLC, is this  
19 correct where it says that was the managing of that -- the  
20 JV entity?

21 A That is correct.

22 Q Okay. I'm going to pull up ECF 692-9. And again do  
23 you see at the top there where it says promissory note?

24 A I do.

25 Q And it says 51,675,000 there on the left, right?

- 1     A     Yes.
- 2     Q     And the date is May 23, 2018?
- 3     A     Correct.
- 4     Q     Do you know what this document is?
- 5     A     Yes, it's part of our closing documents. It's our
- 6     promissory note to pay the loan back to NBK.
- 7     Q     Okay. This is the note that was issued to NBK,
- 8     correct?
- 9     A     That's correct.
- 10    Q     Okay. I'm going to scroll down to the end again. Ms.
- 11    Zaheer, is this your signature at the bottom there?
- 12    A     It is.
- 13    Q     And it's the same kind of structure as the loan
- 14    agreement we just looked at, right? So you on behalf of
- 15    Naissance Capital Real Estate on behalf of Galleria 2425 JV
- 16    on behalf of the debtor, correct?
- 17    A     That's correct.
- 18    Q     Okay. I'm going to pull up Docket Number 692-10 also
- 19    been admitted. Ms. Zaheer, do you see at the top there
- 20    where it says the -- starts with deed of trust on the
- 21    screen?
- 22    A     Yes.
- 23    Q     And do you have -- do you know what this document
- 24    represents?
- 25    A     Yes. It's the deed of trust --



1 Q Okay.

2 A -- that was submitted at the time of closing.

3 Q Okay. And it's the deed of trust. Do you know -- who  
4 was it issued to? If you remember.

5 A It was on the benefit of -- for the benefit of NBK.

6 Q Okay. I'm going to scroll to Page 22 of this document.  
7 And just the same question, Ms. Zaheer. Is that your  
8 signature right there?

9 A It is.

10 Q Okay. I'm going to pull up ECF 692-11. And Ms.  
11 Zaheer, I'm going to point it out to you. Well, I'll just  
12 ask you. Do you -- take a look at it and tell me if you  
13 know what this document is.

14 A Yes, it's the assignment of rights and leases to the  
15 senior lender.

16 Q Okay. And that senior lender is NBK, correct?

17 A That's correct.

18 Q Okay. Again, I'm going to scroll to Page 7 here and  
19 kind of just ask you the same question, Ms. Zaheer. Is that  
20 your signature right there?

21 A It is.

22 Q And I'll ask you one more thing. So Ms. Zaheer, I'm  
23 not going to talk about that exhibit right now. You said  
24 that there was also a mezzanine loan. Can you just explain  
25 what a mezzanine loan is for the record?

1     A     Yes.  It's a subordinated loan to the senior lender  
2     that provides financing to the property.  It's a loan that  
3     is slightly higher in risk than a senior loan and lower than  
4     equity, and it's kind of like a hybrid between debt and  
5     equity.

6     Q     And to what entity would a mezzanine loan be -- and let  
7     me just ask you this.  The mezzanine loan here in this case,  
8     to what entity was that loan made if you know?

9     A     The mezzanine loan was provided to JV, 2425 JV LLC.

10    Q     Okay.  And so that loan would've been -- and that was  
11    the parent company of the debtor, correct?

12    A     That's correct.

13    Q     And why -- and your -- do you have experience with  
14    mezzanine loans other than this one transaction?

15    A     I have, but not within outside of a bank that I work  
16    for.  Uh-uh.  But yes.

17    Q     Okay.  Well, even for a bank, what is the -- is there a  
18    reason that the senior lender might want a loan to be a  
19    mezzanine loan?

20                 MR. BURKS:  Objection.  General question  
21    irrelevant to this transaction, Your Honor.

22                 THE COURT:  I'll overrule the objection.  Go  
23    ahead.

24    BY MR. SHANNON:

25    A     Well, the senior lender doesn't want -- usually he

1 doesn't even want a mezzanine loan. They just want to be  
2 the only loan on the transaction. But should there be a  
3 case of having a secondary mezzanine loan, the reason is to  
4 provide the additional financing for the property.

5 Q Okay. Thank you. I'm going to pull up ECF Number 692-  
6 12. Do you see that in front of you right now, Ms. Zaheer?

7 A I do.

8 Q And do you know what this document is?

9 A Yes. It's our mezzanine loan agreement.

10 Q And Ms. Zaheer, do you remember signing this agreement  
11 as well?

12 A I do.

13 Q Okay. So Ms. Zaheer, if I've asked you this before I  
14 apologize, but so was there any \$14.7 million second lien  
15 loan that was part of that 2018 transaction?

16 A No.

17 Q Did you at some later point ever learn of any attempt  
18 to assert that there was such a loan?

19 A Yes.

20 Q Okay. What -- can you explain what that was then?

21 A Mr. Choudhri approached me to sign a document after the  
22 Stage bankruptcy, and it was to sign like an additional lien  
23 on the property, a deed of trust, and I didn't feel  
24 comfortable with it. I asked to send it to a lawyer, and I  
25 asked for a (indiscernible), which he never provided. And I

1 never signed it. I never saw it after that until later I  
2 learned that he had filed a deed.

3 Q And around what time was that? What date?

4 A That I -- that he...

5 Q Yeah, that he would've reached out to you and asked you  
6 to do that.

7 A It was after the Stage bankruptcy, so probably like the  
8 end of 2020. Something like that.

9 Q Okay.

10 A I think. It was after that, but I can't remember the  
11 exact date.

12 Q Now, Ms. Zaheer, I want to talk a little bit about the  
13 corporate authority here. Oh, actually let me ask you one  
14 more thing. I'm going to pull up a document that has been  
15 admitted. And for the record, this is ECF Number 692-13.  
16 And it's already been admitted, but Ms. Zaheer, I'm going to  
17 ask you if you recognize this signature.

18 A I do.

19 Q Whose signature is that?

20 A Moussa Hussein.

21 Q And does he have a relationship with Naissance Capital  
22 Real Estate?

23 A He did. He was supporting -- I lived between here and  
24 London, so he was an authorized person to act on behalf of  
25 our entity for a period of time.

1 Q Okay. Thank you. I'm going to pull up ECF Number 692-  
2 14 and I'm going to ask you the same question with the  
3 signature that's pulled up there. Is that also the same  
4 person?

5 A Yes.

6 Q And at that time at least had a relationship with  
7 Naissance Capital Real Estate LLC.

8 A That's correct.

9 Q Okay. And just so we're clear, though, I mean, by that  
10 time -- the time that I'm referring to specifically is in  
11 January of 2020.

12 A Yes.

13 Q Okay. Thank you. Ms. Zaheer, I'm going to switch  
14 topics a little bit. When was -- do you know when the  
15 debtor entity we talked about was created?

16 A Owner -- 2425 Owner LLC was created in 2018.

17 Q And so before that time in 2018, it just did not have  
18 any corporate existence?

19 A That's correct.

20 Q Okay. I'm going to put up ECF Number 692-16. Do you  
21 recognize this document here?

22 A Yes.

23 Q Okay. What is this document?

24 A This is our filing of the company.

25 Q And I'm going to pull out this part. It might not save

1 a lot of space. Do you see the top there? It says the name  
2 and address of each governing person is.

3 A Yes.

4 Q And this document, is this one that you would have  
5 approved for whoever filed it?

6 A Yes.

7 Q And this was the only governing person of the debtor at  
8 the time, correct?

9 A Yes.

10 Q Now I'm going to ask you one more question about this.  
11 Now I -- well, I guess I'll ask you. I see a signature  
12 there with your name on it. That's not your physical  
13 written signature, is it?

14 A No.

15 Q But did -- you did authorize this signature to be  
16 placed here, right?

17 A Yes, I think it's a DocuSign from our -- for our  
18 attorneys.

19 Q Okay.

20 A Or our -- yeah, or the accountant who -- one of them  
21 filed it.

22 Q I'm going to pull up ECF 692-17 now. Also been  
23 admitted. Same question. Do you recognize what this  
24 document is?

25 A Yes.

1 Q And what is the document?

2 A It's registering the entity Galleria 2425 JV LLC.

3 Q And this would've been the same kind of thing, a  
4 document that you authorized and approved, correct?

5 A Yes.

6 Q Thank you. I'm going to pull up ECF Number 692-18. Do  
7 you -- Ms. Zaheer, do you recognize what this document is?

8 A It's the LLC agreement or -- yes.

9 Q Okay. And so is it the company agreement for Galleria  
10 2425 JV LLC?

11 A Yes.

12 Q And that is the sole member of the debtor, correct?

13 A That's correct.

14 Q Okay. Do you remember this document being created?

15 A Yes.

16 Q And do you remember when this document was executed?

17 A In 2018.

18 Q Okay. And bear with me. I'm going to find the  
19 signature page here. And Ms. Zaheer, is that your signature  
20 there on this company agreement?

21 A Yes, it is.

22 Q Ms. Zaheer, based on your understanding of this  
23 agreement, did anyone other than Naissance Capital Real  
24 Estate have the authority to act on behalf of this entity,  
25 the JV entity back in 2018?

1 A No.

2 Q So only Naissance Capital Real Estate could.

3 A That's correct.

4 Q And did you ever authorize Mr. Choudhri to act -- to  
5 sign documents on behalf of that entity, the JV entity?

6 MR. BURKS: Objection.

7 BY MR. SHANNON:

8 A No.

9 MR. BURKS: Assumes -- that assumes that she had  
10 either the authority or the duty to authorize and the --

11 THE COURT: I think that's clear from the  
12 evidence, Mr. Burks. If you want to -- I'll let you respond  
13 to that, but I think it's clear from the evidence that  
14 that's the case.

15 MR. SHANNON: I think she's already testified that  
16 he could --

17 THE COURT: I'll overrule that objection. Thank  
18 you.

19 BY MR. SHANNON:

20 Q And Ms. Zaheer, your answer to that was no, correct?

21 A That's correct. No, he did not.

22 Q Okay. And at some point did the managing member of  
23 that JV entity change?

24 A Yes.

25 Q Do you remember when that happened?



1 A In -- around 2021.

2 Q Okay. I'm going to pull up ECF Number 692-19. Do you  
3 recognize this document?

4 A I do.

5 Q And is this the document that made that change or who  
6 had the authority to act on behalf of the JV entity?

7 A Yes.

8 Q And this is -- Ms. Zaheer, is this your signature right  
9 here on the document?

10 A It looks like my signature, but...

11 Q Okay. And I'm going to pull up one other thing. There  
12 is a date there that -- do you know what that date is right  
13 there?

14 A January 18, 2021.

15 Q Okay. It's January. Thank you.

16 A Yeah, it looks like June or January.

17 Q If it was between June or January, which one do you  
18 think better fits your recollection of when --

19 A Oh, no, no. It was January.

20 Q Okay.

21 A It was January.

22 Q Ms. Zaheer, last line of questions I'll have for you.  
23 You mentioned a little bit before the Stage bankruptcy. And  
24 you were involved in the management of the debtor through  
25 those other entities at the time, correct?

1 A Yes.

2 Q And was that around 2021? Or I'm sorry, 2020.

3 A Yes.

4 Q Did that cause any financial issues for the debtor?

5 A Yes.

6 Q How so?

7 A Stage Stores occupied around seven floors of the eleven  
8 of the asset. So when they went into insolvency or into  
9 bankruptcy, we could no longer afford to pay our debts.

10 Q And would you describe that as financial distress after  
11 that bankruptcy?

12 A Yes.

13 Q Okay. Thank you.

14 MR. SHANNON: No further questions, Your Honor.

15 THE COURT: All right, Mr. Baker.

16 MR. BURKS: Mr. Burks?

17 THE COURT: Mr. Burks. I'm sorry. I apologize  
18 deeply.

19 MR. BURKS: No, it's all right.

20 THE COURT: No, it's not.

21 CROSS-EXAMINATION OF AZEEMEH ZAHEER

22 BY MR. BURKS:

23 Q Hello.

24 A Hello.

25 Q Did you sign an agency agreement with Ali Choudhri?

1     A     I signed an agency agreement with Ali Choudhri on a  
2     different entity.

3     Q     So your testimony today is that you never signed any  
4     agency agreement with Ali Choudhri in connection with the  
5     acquisition of this property.

6     A     That's correct.

7     Q     Isn't it true that all the documents that we just  
8     looked at were signed by you but on behalf of sometimes two,  
9     sometimes three or four (indiscernible)?

10    A     Yes, I signed the documents on behalf of Naissance, on  
11    behalf of owner, as a general partner, and I signed the  
12    documents as the mezzanine lender.

13    Q     And who else?

14    A     And that's it.

15    Q     So do we need to go back up and look at the documents  
16    and see the signature -- you know, your signature's there on  
17    Naissance, but under two or three entities below each one  
18    (indiscernible)?

19    A     So sure. We can pull up the documents that you're  
20    referencing and I can explain it to you.

21    Q     All right. I don't have control of those documents  
22    right now. So explain why there were multiple entities but  
23    only Naissance was -- had a signature for you. What -- who  
24    was signing on behalf of all those other entities?

25    A     Okay. So we have Gallery owner, right? Gallery owner

1 is owned by the JV entity. The JV entity is managed by  
2 Naissance Capital Real Estate LLC. This is a U.S. entity  
3 based in Delaware and that entity was the general partner of  
4 the ownership of the 2425 Owner LLC.

5 Q Did Naissance own the property?

6 A Naissance Capital Real Estate LLC owned 1.3 or 2  
7 percent of the exact amount, something like that, of the  
8 property, yes.

9 Q But Naissance was acting on behalf of the actual owners  
10 of the property, correct?

11 A Naissance Capital was the general partner for the JV.

12 Q So Naissance in all of these documents was acting on  
13 behalf of other entities.

14 A So you're --

15 Q Yes or no.

16 A There's a couple of different Naissances. There is a  
17 Naissance Capital based in the U.K. That U.K. entity is a  
18 foreign entity that manages Naissance Galleria, which is the  
19 mezzanine lender.

20 Q You didn't answer my question, did you?

21 A I did.

22 Q Oh.

23 A Naissance --

24 Q All right.

25 A -- Capital Real Estate is a separate entity from

1 Naissance Capital Real Estate LTD, which is a U.K. entity.

2 So it's not all one Naissance. There are multiple

3 Naissances.

4 Q Did Naissance own the property?

5 THE COURT: Which one are you talking about?

6 MR. SHANNON: Objection.

7 MR. BURKS: The other one. The other Naissance  
8 entity.

9 THE COURT: Okay.

10 BY MR. BURKS:

11 A Naissance owned 1.28 something percent of the property,  
12 yes.

13 Q But I want to focus on the Naissance (indiscernible) on  
14 (indiscernible), okay? Is that all right?

15 A On behalf of the lender or the equity?

16 Q On behalf of who you signed. You signed these  
17 documents, correct?

18 A Yes.

19 Q And you signed them on behalf of Naissance, correct?

20 A Yes.

21 Q And if there are 3 or 4 or 500 Naissances, I want to  
22 refocus on the one that you signed on behalf of, all right?

23 A I signed on behalf of both Naissance Capital entities.

24 Q Okay. And it says that on the document.

25 A It does, yes.

- 1 Q And was Naissance the borrower?
- 2 A Galleria 2425 Owner LLC was the borrower.
- 3 Q Okay. Was Naissance the owner of the property other
- 4 than one percent?
- 5 A No.
- 6 Q So who signed on behalf of Galleria and who owned the
- 7 property before it was sold?
- 8 A Who owned the property? This -- who was the seller?
- 9 Q Yeah.
- 10 A It was the entity -- I think it's called -- also like a
- 11 WL, 2425 WL LLC.
- 12 Q Oh, the claimant on this claim you're testifying about
- 13 owned the property.
- 14 A It's the seller.
- 15 Q Okay. 2425 WL sold the property. Did you sign it on
- 16 behalf of them?
- 17 A No. Adam Broder signed on behalf of them.
- 18 Q And the buyer was Galleria the debtor here.
- 19 A Mm-hmm.
- 20 Q Did you sign on behalf of them?
- 21 A Yes. That's correct. I signed as managing member of
- 22 Naissance Capital.
- 23 Q An agent?
- 24 A Not an agent.
- 25 Q What were you?

1 A I was a general partner.

2 Q Of Naissance.

3 A Yes. Would you like me to go over the structure with  
4 you?

5 Q No, I'd like to understand how if you weren't the agent  
6 of Galleria, I'd like to know how you were sign on behalf of  
7 Galleria.

8 THE COURT: Let's be clear for the record. You're  
9 talking about Galleria 2425 Owner? Because there are  
10 multiple Gallerias, okay?

11 MR. BURKS: You're right.

12 THE COURT: So let's make the record clear.

13 BY MR. BURKS:

14 Q Galleria 2425 Owner.

15 A Yes. Galleria 2425 Owner is owned by 2425 JV --

16 Q Mm-hmm.

17 A -- 100 percent shares. That JV entity has a general  
18 partner and a limited partner. Naissance Capital is a  
19 general partner.

20 Q All right. And isn't it true, though, that you are the  
21 agent of Ali Choudhry is --

22 A Absolutely not. (Indiscernible).

23 Q (Indiscernible)?

24 A Yes, I'm sorry.

25 Q Isn't it true that you were the agent of Ali Choudhry

1 in this transaction?

2 A No.

3 Q Were you the agent of Ali Choudry in any other  
4 transactions?

5 A Balio.

6 Q Which?

7 A Balio.

8 Q Spell that please.

9 A B-A-L-I-O.

10 Q So your position is that when you executed for  
11 Naissance, you were not acting as an agent for 2425 WL.

12 A That's 100 percent correct. I was acting as a general  
13 partner for 2425 JV LLC.

14 Q And who was the other general partner? Were there any  
15 other partners in that (indiscernible)?

16 A There was a limited partner.

17 Q Who was it?

18 A JW2. Brad Parker.

19 Q Brad Parker. 2425 WL is the owner of the property.  
20 Who were the managing members or owners of the entity?

21 A Brad Parker.

22 Q Did Ali Choudhri have any ownership in that?

23 A Later assigned the company over to him from Brad  
24 Parker.

25 Q Who assigned what to whom?



1 A Brad Parker assigned the company to Ali Choudhry.

2 Q When did he do that?

3 A I don't know that. You have to ask them.

4 Q I think I found -- no, I didn't. I didn't really

5 follow your chart, but I think I have a vague idea of where

6 counsel's going with it. How much cash in this transaction

7 -- refresh the Court's memory who was the buyer, the debtor,

8 2425 Galleria Owner --

9 A Correct.

10 Q -- how much cash did they put in?

11 A Nothing.

12 Q Nothing. Okay. And -- but isn't it true that there

13 was \$14,730 cash paid to Ali Choudhri? That's what you

14 testified to.

15 A He received the money as the seller.

16 Q Who?

17 A Ali Choudhri. Adam --

18 Q I thought you said he wasn't the seller.

19 A Adam Broder who later found out had an agency

20 (indiscernible) and he was a proxy for Ali Choudhri.

21 Q Okay. So let's refresh our memory. The \$14,730 --

22 A You mean 14 million?

23 Q Yeah, 14 million, thank you for correcting me, we're

24 dealing with millions of dollars here. I apologize. Thank

25 you.

- 1 A It's okay.
- 2 Q So the 14 million, where did it come from? It went to
- 3 Ali you just testified, but where did it come from?
- 4 A It came from the 51.6 million plus the 16.1 million
- 5 that I provided to buy the asset.
- 6 Q So it was a loan from 2425 WL.
- 7 A No. It's not a loan.
- 8 Q Where did it come from?
- 9 A There was no --
- 10 Q The buyer didn't pay it.
- 11 A So the -- if you look at the settlement statement,
- 12 you'll see --
- 13 Q Right.
- 14 A -- that the previous loan for Bank of America, looks
- 15 like 40 something million, the surplus went back to the
- 16 seller's entity, which was more than 14 -- 13 point
- 17 something million dollars.
- 18 Q So it went back to whom?
- 19 A The beneficial owner is Ali Choudhri.
- 20 Q And you're saying that's not a loan the way it's set up
- 21 in the closing statement?
- 22 A I mean...
- 23 Q Let's forget about the note. I'm going to ask you a
- 24 question.
- 25 A My --

1 Q Forget about the note.

2 A I get paid for my house. Does that mean that was a  
3 loan or was that a payment for buying my house? It -- I  
4 don't understand your question. It makes no sense.

5 Q What was the purpose of the \$14,700 --

6 A 14 million?

7 Q -- \$14,700,000 on the closing statement? What does  
8 that --

9 A I don't --

10 Q -- represent?

11 A The seller sold the property.

12 Q 2425 WL sold the property.

13 A Correct. And in return they received cash of \$14.6  
14 million.

15 Q From the buyer?

16 A From the proceeds that were surplus from the  
17 acquisition.

18 Q All right. So the surplus of the acquisition. What  
19 did you say the value of the property was?

20 A Around 90 something million.

21 Q And how much was the (indiscernible) note?

22 A 51.6. Could I reference the settlement statement?  
23 It's been --

24 Q Sure. You have it (indiscernible).

25 A Otherwise I'm happy to just ballpark the numbers, which

1 is 51 point something million. My loan, the mezzanine loan  
2 that we brought (indiscernible) for was 16.1 million. This  
3 was all cash. NBK brought 51.6 million. I brought 16.1  
4 million, and that paid off the previous loan, the previous  
5 liens, and it had a surplus of almost \$14 million. And that  
6 \$14 million went into the pocket ultimately of Ali Choudhri.

7 Q Isn't it true that the \$14.7 million actually came from  
8 2425 WL?

9 A What?

10 MR. SHANNON: I'm going to object. We're throwing  
11 numbers around here that aren't the same, Your Honor. It  
12 looks like --

13 BY MR. BURKS:

14 A This is like a completely -- this is such a strange --  
15 sorry.

16 Q Go ahead.

17 MR. SHANNON: No, just wait.

18 MR. BURKS: There's no question, but if you'd like  
19 to speak --

20 MR. SHANNON: Mr. Burks --

21 THE COURT: No, I don't want anyone to ask a  
22 question that's not on the record. Mr. Burks, I understand  
23 the transaction. I don't think you're making any headway.  
24 If you're trying to make headway, I'd like you to get on  
25 with it. Because I understand the transaction. It's not

1     unfortunately that complicated a transaction. And all  
2     you're doing is muddying the record with questions that  
3     really, to my mind, don't make any sense.

4             MR. BURKS: All right. I need the closing  
5     statement up on the screen, Judge. Is --

6             THE COURT: Well, that's your --

7             MR. BURKS: Yes, it is.

8             THE COURT: -- duty and your prerogative, and you  
9     can put it up, but I'm not going to aid you.

10            MR. BURKS: I don't want you to --

11            THE COURT: You should be ready --

12            MR. BURKS: I don't want you to --

13            THE COURT: -- okay?

14            MR. BURKS: I don't want you to aid me.

15            THE COURT: You have the -- I mean, there's a  
16     connection right there. Connect -- put up whatever you  
17     want.

18            MR. BURKS: Judge, I'm on cross. It's their  
19     Exhibit 5, but it's also my Exhibit 8. I believe that Mrs.  
20     Bates is on the line. If Mrs. Bates will put it up, I'll  
21     look at it, Judge.

22            THE COURT: The problem is that you're connected  
23     to an internal system. So you have to project from inside  
24     the courtroom.

25            MR. BURKS: Well, counsel won't put it back up. I

1 can't put it up and question the witness.

2 THE COURT: Then move along please.

3 MR. BURKS: Yes, Your Honor. (Indiscernible). Is  
4 there a way to project this, Judge?

5 THE COURT: It's already on, Mr. Burks.

6 MR. BURKS: Thank you, Your Honor.

7 THE COURT: This is why we allow you to come and  
8 test before you come to court.

9 MR. BURKS: Excuse me, Judge?

10 THE COURT: This is why we allow you to come and  
11 test the system before you come to court so that you can be  
12 prepared.

13 MR. BURKS: Noted. Thank you.

14 THE COURT: You're welcome.

15 BY MR. BURKS:

16 Q Will you -- I direct your attention to 303, cash from  
17 borrower.

18 THE COURT: So first of all, you want to tell me  
19 what it is for the record, Mr. Burks?

20 MR. BURKS: Yes, Your Honor. This is the  
21 settlement statement, which has been --

22 THE COURT: I just need an ECF number. Your  
23 exhibits, their exhibits, I don't care.

24 MR. BURKS: 637 dash probably 5.

25 THE COURT: All right. Thank you. Go ahead.

1 MR. BURKS: Thank you, Your Honor.

2 BY MR. BURKS:

3 Q I direct your attention to line 303. You see it?

4 A Yes.

5 Q \$14,730,000 and change, correct?

6 A That's correct.

7 Q And where did that cash come from?

8 A Well, it came from the senior lender and the mezzanine  
9 lender. And once the liens were paid off, that was the  
10 surplus of funding.

11 Q And where did that cash go to?

12 A It went ultimately to Ali Choudhri.

13 Q When you say ultimately Ali Choudhri, what entity did  
14 it go to?

15 A It went to the seller's entity.

16 Q And what was that entity?

17 A The WL entity.

18 Q The claimant on this proof of claim, correct? Isn't it  
19 true the 14,730 actually came from 2425 WL on this  
20 transaction?

21 A Unless I don't know how to do math, no.

22 Q Okay.

23 MR. BURKS: One moment, Your Honor.

24 BY MR. BURKS:

25 Q Were you present at the closing?

1 A I was.

2 Q You referenced the deed of trust. Do you know when it  
3 was executed?

4 A It was executed in 2018.

5 Q The deed of trust for the purported \$14,700,000 and  
6 change note to (indiscernible) 2425 WL, do you know when  
7 that deed of trust was executed?

8 A I understand --

9 Q Right.

10 A -- that -- I don't know because I didn't execute it.  
11 It was --

12 Q Do you know when the note was executed?

13 A There was no note.

14 Q There was no promissory note to 2425 WL for 14.7  
15 million and change.

16 A I am not part of WL and I am not part of GW2. There  
17 was no note.

18 Q If the deed of trust was executed --

19 MR. BURKS: One moment. I want to use this up  
20 (indiscernible) again. I like that. Thank you, Mr. Pope.

21 BY MR. BURKS:

22 Q You recognize this document?

23 A I have seen it in files subsequent.

24 Q And when did you first see it?

25 A I --



1 THE COURT: Again, Mr. Burks, what ECF number are  
2 we making a reference to for the record?

3 MR. BURKS: Yes, Your Honor. We're referencing  
4 637-2, the attachments.

5 THE COURT: All right. Thank you.

6 MR. BURKS: Thank you, Your Honor.

7 BY MR. BURKS:

8 Q You ever seen this deed of trust before?

9 A I think when you guys filed it looking through your --  
10 the case documents.

11 Q And so the first time you saw this deed of trust was  
12 when?

13 A Sometime looking over case documents.

14 Q All right. So you don't know when it was filed, when  
15 it was signed, do you?

16 MR. TANG: Your Honor, I'm going to object. This  
17 is an incomplete document. Can he show the rest maybe?

18 MR. BURKS: Sure.

19 THE COURT: And I'll sustain the objection.

20 MR. TANG: Thank you, Your Honor.

21 THE COURT: It's an incomplete document.

22 BY MR. BURKS:

23 Q You testified that the -- Mr. Choudhri asked you to  
24 sign the document, correct?

25 A That's correct.

1 Q But what document did he ask you to sign?

2 A So it was to sign a document to put a lien on the  
3 building.

4 Q And what document is what? Do you have it with you?

5 A I have an email -- a text message to him asking for a  
6 soft copy of it and asked to be reviewed and he never sent  
7 it to me.

8 Q He never sent you the document?

9 A Nope.

10 Q So what are we talking about? What was the document?  
11 How do you know it was a lien on the building?

12 A Because I heard.

13 Q You heard what?

14 A I heard that he filed a fake lien.

15 Q When did you hear that?

16 A 2021, '22. Something like that. I can't remember, but  
17 it was sometime afterward. I was litigating against him.

18 Q Who characterized it as a fake lien?

19 A I just did.

20 Q Okay. And -- but you said you didn't know what was  
21 signed back in 2018. You said you didn't sign anything.  
22 Isn't that true?

23 A I said that I did not sign -- that there was no other  
24 notes at the time of closing. During the time that I was a  
25 managing member the only documents that were liens --

1     probably a lien on the property was from NBK. We  
2     subsequently had a tax lien, but this is -- it didn't exist.

3     Q     You're a lawyer, correct?

4     A     No.

5     Q     So would you agree with me that there's a difference  
6     between the date a document, such as a deed of trust, is  
7     signed versus the date it is recorded?

8             MR. TANG:  Objection, Your Honor.  That calls for  
9     a legal conclusion.

10            THE COURT:  I'll sustain the objection.

11     BY MR. BURKS:

12     Q     Do you know when the deed of trust, the fake deed of  
13     trust that you referred to, do you know when it was signed?

14     A     I do not.

15             MR. TANG:  Objection, Your Honor.  That's been  
16     asked and answered.

17            THE COURT:  I'll sustain the objection.

18             MR. BURKS:  Let the record reflect that she said  
19     no and shook her head no, Your Honor.

20            THE COURT:  I sustained the objection.

21             MR. BURKS:  I understand.

22     BY MR. BURKS:

23     Q     Do you know who recorded the "fake deed of trust"?

24     A     I can have a look at this document if you can show me.

25     Q     Sure.

1 MR. TANG: Your Honor, I'm going to also object to  
2 foundation. I don't think there's ever been any testimony  
3 it was filed. And I think Mr. RJ, the arguments that this  
4 was hidden in the pocket --

5 THE COURT: I know for a fact that it was  
6 recorded.

7 MR. TANG: Okay.

8 THE COURT: So -- because I've had a long history  
9 with this case, so while I understand your objection, I've  
10 got some knowledge you're not privy to.

11 MR. TANG: (Indiscernible), Your Honor.

12 THE COURT: So -- okay. Thank you. No, that's  
13 fine. Raise your objections please.

14 MR. TANG: Thank you.

15 MR. BURKS: May I approach the witness with a hard  
16 copy?

17 THE COURT: No, you can do it right there. What's  
18 what it's for, Mr. Burks.

19 MR. BURKS: Are ECF 637 (indiscernible)?

20 THE COURT: You talking about 637-2?

21 MR. BURKS: 2.

22 BY MR. BURKS:

23 Q I'm showing you -- what I'm reflecting to you is the  
24 signature page on the "fake deed of trust". The buyer of  
25 the property was Galleria 2425 Owner, correct?

1 A That's correct.

2 Q Was Ali Choudhri the manager of either Galleria West  
3 Loop Investments? Yes or no.

4 THE COURT: When?

5 MR. BURKS: At the time of -- good question,  
6 Judge. Thank you.

7 BY MR. BURKS:

8 Q Are you aware of -- as of May 23, 2018, are you aware  
9 of what entities Ali Choudhri was the manager or owner of?

10 A I'm still not aware of all of the entities he's a  
11 manager or the owner of.

12 Q Okay. Thank you.

13 MR. BURKS: Your Honor, I may be done on cross if  
14 I can have 45 seconds to ensure that.

15 THE COURT: You may have exactly 45 seconds.

16 MR. BURKS: Thank you for that, Your Honor.

17 THE COURT: And I'm watching the clock.

18 MR. BURKS: On the atomic clock.

19 THE COURT: On the atomic clock. You've got 20  
20 seconds left.

21 MR. BURKS: And I can give you a countdown.

22 BY MR. BURKS:

23 Q Did you sign any of the Naissance entities' ownership  
24 over to Ali Choudhri?

25 A No.

1 Q Do you believe that in the corporate structure of  
2 things that you were a fiduciary of some sort to Ali  
3 Choudhri?

4 MR. TANG: Objection, Your Honor. Probably calls  
5 for a legal (indiscernible).

6 THE COURT: I'll sustain the objection. Thank  
7 you.

8 MR. BURKS: Nothing further, Your Honor.

9 THE COURT: Thank you. Mr. Shannon?

10 MR. SHANNON: I have no further questions, Your  
11 Honor.

12 THE COURT: Ma'am, thank you for coming and  
13 testifying. I appreciate it (indiscernible).

14 MR. POPE: Your Honor, I did have two questions.

15 THE COURT: Are you a part of this objection? I  
16 don't think you are. I think you're excused. Thank you.  
17 Can I excuse this witness, Mr. Shannon?

18 MR. SHANNON: Yes, Your Honor.

19 THE COURT: All right. Thank you, ma'am. You're  
20 free to leave.

21 MR. SHANNON: Thank you (indiscernible).

22 THE COURT: Thank you. Thank you for appearing.  
23 All right, Mr. Shannon. Next witness?

24 MR. SHANNON: Yes, Your Honor. I'd like to call  
25 Christopher Wyatt.

1           THE COURT: Mr. Wyatt, do you want to come  
2 forward? If you could go to the podium, sir, I'll swear you  
3 in. Please raise your right hand. Do you swear or affirm  
4 to tell the truth, the whole truth, and nothing but the  
5 truth so help you God?

6           THE WITNESS: I do.

7           THE COURT: All right. Please be seated, sir.  
8 Yeah. Just make sure you speak into the microphone. Thank  
9 you.

10          THE WITNESS: Yeah, sure.

11                 DIRECT EXAMINATION OF CHRISTOPHER WYATT

12 BY MR. SHANNON:

13 Q     Good morning, Mr. Wyatt. Could you spell your first  
14 and last name for the record please?

15 A     It's Christopher, C-H-R-I-S-T-O-P-H-E-R, last name's  
16 Wyatt, W-Y-A-T-T.

17 Q     And Mr. Wyatt, are you here under a subpoena today?

18 A     Yes.

19 Q     I want to start off kind of with your background and  
20 your knowledge of things.

21                 MR. BURKS: Your Honor, at this time I would  
22 object to the calling of this witness. I was not aware that  
23 he'd be called as a witness in this case. I don't -- until  
24 two days ago.

25                 THE COURT: The fact that you're not ready, Mr.

1 Burks, is not grounds for objection. It's overruled. Thank  
2 you.

3 MR. BURKS: Yes, Your Honor.

4 BY MR. SHANNON:

5 Q Mr. Wyatt, did you ever work with or for any entity  
6 related to Mr. Ali Choudhri?

7 A Yes.

8 Q Can you explain what entities you had involvement with?

9 A Well, you know, a lot of entities. But purportedly I  
10 was hired by Jetall Companies Inc. as an employee but paid  
11 through another company they had called Balio. So it kind  
12 of mixes, matches everything with respect to entities.

13 Q And can you explain what your role is with whichever  
14 entity you were working for?

15 A During that time probably I think I started there in  
16 July 2019 and -- until October -- around October 20th of  
17 2020. And during that time I was -- the title I was given  
18 is chief operating (indiscernible).

19 Q And in that role, did you become familiar with Mr.  
20 Choudhri's businesses beyond just Jetall Companies Inc.?

21 A Yes.

22 Q Did you become familiar with 2425 W -- I'm sorry, 2425  
23 -- excuse me. I'm sorry. Let me just restart over.

24 Galleria 2425 Owner LLC.

25 A Yes.



1 Q Did you become familiar with an entity referred to as  
2 2425 WL LLC?

3 A Yes.

4 Q And how did you become familiar with those different  
5 entities?

6 A Well, there were a lot of transactions going in  
7 connection with those. Like the Galleria 2425 became  
8 involved because there was a Stage bankruptcy at least  
9 pending for them, and you know, caused economic problems for  
10 that entity.

11 Q And were you familiar with the financials of all these  
12 different entities in that role?

13 A I saw financials. As far as being familiar with, you  
14 know, monthly operating reports and stuff like that, no.

15 MR. BURKS: Your Honor, I'm going to object to  
16 again this witness on grounds that there is no foundation  
17 that he worked for the debtor, worked for 2425 WL, or that  
18 he has any knowledge about the transaction that we --

19 THE COURT: I don't know what he's going to  
20 testify to yet, Mr. Burks. This is all preliminary. If you  
21 have an objection to what he testifies to when he actually  
22 says something, please raise your objection, okay?

23 MR. BURKS: Yes, Your Honor.

24 THE COURT: Thank you.

25 BY MR. SHANNON:

1 Q And Mr. Wyatt, you are no longer involved in Jetall  
2 Companies or any of these entities, correct?

3 A Correct.

4 Q And when did that happen? When were you no longer  
5 involved with them?

6 A Around October 18th or October 20th of 2020.

7 Q And I guess why did you kind of leave your involvement  
8 with those entities?

9 A Well, there were a number of things. One is I started  
10 to independently investigate through business records of  
11 transactions that were being made on behalf of Mr. Choudhri.  
12 And (indiscernible) found that I was extremely uncomfortable  
13 with those transactions. He asked me to go into an  
14 arbitration trial and lie before an arbitration panel and  
15 say that he had no ownership of an entity called Balio, he  
16 never had an ownership interest in it when in fact I know he  
17 did. And I had the agency agreement where he was the  
18 principal, and I had the original. It caused a lot of rift.

19 MR. BURKS: Move to strike. He's testifying from  
20 documents not in the record. Probably based on a lot of  
21 hearsay.

22 THE COURT: He can testify on his personal  
23 knowledge. Thank you. You're overruled.

24 MR. BURKS: Yes, Your Honor.

25 BY MR. SHANNON:

1 Q And I guess in the course of those role and in the --  
2 just based on your personal knowledge from that role, did  
3 you have any knowledge of the sale of the property located  
4 at 2425 West Loop in the Galleria?

5 A I became familiar with that transaction around June  
6 2020. And the reason why I became familiar with it is that  
7 Mr. Choudhri directed me to draft a note and deed of trust  
8 for that entity. And I went back and looked at closing  
9 documents to try to figure out was there a \$14 million loan  
10 made on the property, although I had drafted these note and  
11 deeds of trust for him that he wanted to submit to Azeemeh  
12 Zaheer, sign. I went back and started looking at the  
13 closing documents and found out that there was never a loan.  
14 There was never a note.

15 Q And did you ever discuss that with Mr. Choudhri?

16 A I told him that I didn't think it was proper to try to  
17 after-the-fact create a document and file it and record it  
18 to try to get leverage in a bankruptcy case.

19 Q And the bankruptcy case you were talking about was at  
20 that time the Stage bankruptcy case, correct?

21 A Correct.

22 Q And the timing of those conversations, when would those  
23 have been?

24 A Those were in June of 2023.

25 Q Of 2023?

1 A Oh, 2020. I'm sorry.

2 Q And you said you looked at a closing statement in  
3 connection with that transaction, correct?

4 A Yes.

5 Q I'm going to pull up a document 692-4, which has been  
6 previously admitted.

7 MR. SHANNON: And Your Honor, I believe I -- you  
8 need to --

9 THE COURT: Oh, excuse me. I'll put it back  
10 (indiscernible).

11 MR. SHANNON: That's okay.

12 THE COURT: I apologize.

13 BY MR. SHANNON:

14 Q So Mr. Wyatt, I'm going to -- and I know it's small but  
15 we'll pull it up, but I'm just going to go to slide through  
16 it and tell me if this is the document that you looked at,  
17 at that time.

18 A You're going a little bit quick for me.

19 Q Okay. Let me slow down. I'll go back to the  
20 beginning.

21 A Okay. Okay. Okay. Yes.

22 Q And you reference or there is reference in this  
23 document a \$14.7 million amount. Are you aware of kind of  
24 that amount being a relevant amount?

25 A Yes.

1 Q And did you ever talk with Mr. Choudhri about that  
2 amount?

3 A We talked about it, and when he asked me to draft a --  
4 the note and deed of trust to be representative of a lien  
5 that he said he was owed money on.

6 Q And did Mr. Choudhri ever refer to that amount as  
7 anything in particular?

8 A He told it was his equity out of the closing.

9 Q And your understanding was that not a loan. It was  
10 equity. Are those things different in your mind?

11 A I worked in banking for a long time, and based on this  
12 settlement statement, the \$14 million seems to be cash paid  
13 back to the seller.

14 Q And do you have an understanding, I'm going to pull it  
15 out, of what a seller credit means in a closing statement  
16 like this or a settlement statement?

17 A I certainly haven't seen the word "credit" used.

18 Q Okay. So you talked about Mr. Choudhri asking you to  
19 create this note and deed of trust.

20 A Correct.

21 Q If there was a note that had already existed based on  
22 what was available to you at the time in your looking at the  
23 documents, would you have seen such a document that existed  
24 in 2020?

25 A Yes. I would have.

1 Q And so the fact that you -- did you see one at that  
2 time?

3 A No. I searched everywhere for it. I couldn't find it.

4 Q And so at least as of 2020, that document did not exist  
5 as far as you could tell.

6 A As far as I know, I couldn't find it anywhere. I asked  
7 him about it and he said we're just going to do the new  
8 note.

9 Q I believe you mentioned that -- or are you aware of a  
10 time in which Mr. Choudhri talked to Ms. Azeemeh Zaheer to  
11 execute a note?

12 A So --

13 MR. BURKS: So calls for hearsay, Your Honor.  
14 Classic hearsay.

15 THE COURT: I want you to respond to that.

16 MR. SHANNON: Well, I'm asking about Mr. Choudhri.  
17 Mr. Choudhri is the -- at least a vice principal, but  
18 probably the principal of the claimant. He signed the proof  
19 of claim.

20 THE COURT: I'll sustain the objection.

21 BY MR. SHANNON:

22 Q Did you ever personally hear, personally and not today  
23 and not in court, did you ever personally hear Mr. Choudhri  
24 do that?

25 MR. BURKS: Objection. Do what?

1 BY MR. SHANNON:

2 Q Pressure Ms. Zaheer to execute a note.

3 A No.

4 Q And when you -- again, just to recap, as far as you  
5 know, there was not \$14.7 million loan made as part of that  
6 2018 transaction.

7 A No.

8 MR. SHANNON: Thank you, Your Honor. No more  
9 questions, Your Honor.

10 THE COURT: Mr. Burks?

11 MR. BURKS: Thank you, Judge.

12 CROSS-EXAMINATION OF CHRISTOPHER WYATT

13 BY MR. BURKS:

14 Q When did you come onto work for -- which entity did you  
15 say you worked for, sir?

16 A Well, I was told Jetall Companies Inc.

17 Q All right. And when did you first -- establish a  
18 timeline for me. When did you first come onto work with  
19 Jetall?

20 A July 2019. Probably the first week.

21 Q So actually the transaction, correct?

22 THE COURT: What transaction, Mr. Burks?

23 BY MR. BURKS:

24 Q After the sale of the property at issue by 2425 WL to  
25 Galleria 2425 Owner, correct?

1 A Correct.

2 Q So you have no personal knowledge of what happened at  
3 the time of the transaction.

4 A When? In 2018?

5 Q Correct.

6 A No, I do not.

7 Q Well, when did you leave working for whichever entity  
8 you thought you were working for?

9 A October 2020.

10 Q October 2020.

11 A Mm-hmm.

12 Q At the time that you left -- let me rephrase that.  
13 Isn't it true that...

14 MR. BURKS: Can we see that on the screen, Your  
15 Honor? I don't want your help, but I can't turn it on.

16 THE COURT: That's fine.

17 BY MR. BURKS:

18 Q Isn't it true that you just said you have no idea what  
19 a seller credit to buyer is?

20 A That's correct.

21 Q So what do you think the \$14,730,000 is?

22 A That looks like it was paid to the seller. If you look  
23 at line 603, cash to seller \$13,718,000.

24 Q Paid to the seller by whom?

25 A The buyer as part of the closing statement. Buyer's



1 got funding. Seller.

2 Q So now that you've decided to give your opinion on  
3 that, did you hear the testimony earlier that the buyer put  
4 in no money?

5 A That's correct.

6 Q All right. Did you understand the 2018 transaction  
7 when Mr. Choudhri approached you to draft the document?

8 A Not initially, no.

9 Q Oh, but you learned afterward.

10 A After he asked me to draft a note and a deed of trust  
11 in connection with \$14 million that was never loaned. Yeah,  
12 I went back and started looking at his transaction because  
13 he sent me a voicemail message from Azeemeh Zaheer where she  
14 said, look, I'm not comfortable with this. I'm not going to  
15 sign it. I think I need a lawyer to look at it.

16 Q Okay.

17 A That's when I started to go back and look and say what  
18 is really going on here.

19 Q Isn't it true that Mr. Choudhri told you that the  
20 seller credit to buyer of \$14,730,000 was in fact a loan  
21 from WL back to the buyer?

22 A Nope.

23 Q So what is a credit to the buyer?

24 A Not sure.

25 Q Who's the seller?

- 1 A The seller in what this transaction?
- 2 Q Yeah.
- 3 A The seller was 2425 WL I believe.
- 4 Q And who was the buyer?
- 5 A Galleria 2425 Owner.
- 6 Q So the seller credits the buyer \$14,730,000, correct?
- 7 A I don't know. I'm not -- like I said, I don't know
- 8 what that seller credit to buyer is.
- 9 Q Isn't that a loan?
- 10 A No.
- 11 Q You just said you didn't know what it was, sir.
- 12 A There's been no -- there was never any money loaned in
- 13 connection with the \$14 million. This deed of trust and
- 14 note that Mr. Choudhri wanted drafted in June 2023 was
- 15 clearly an intent to fraudulently put a lien on this
- 16 property so he could leverage in the Stage Stores
- 17 bankruptcy. That's my opinion. That's the way I took it.
- 18 Q Isn't it true that you're basing your opinion after
- 19 saying that you don't know what a seller credit to buyer is
- 20 and you had no knowledge whatsoever of a transaction at the
- 21 time because you weren't there?
- 22 A I wasn't there. You're correct.
- 23 Q And you don't know what a seller credit to buyer is.
- 24 A Nope.
- 25 Q But you formed your opinion.

1       A       Formed my opinion because I know exactly how he works,  
2       and he was trying to put a lien --

3               THE COURT:   Mr. Burks --

4       BY MR. BURKS:

5       A       -- on this property that was fraudulent.

6               THE COURT:   -- I'm going to -- bear with me for  
7       one second, okay?  You're not the village idiot.  I'm not  
8       the village idiot, okay?  I can read a settlement statement.  
9       I know what a settlement statement means.  You should.  
10      You're proposing an argument that has no basis in law or  
11      fact --

12              MR. BURKS:   Your Honor --

13              THE COURT:   -- okay?  You can continue with that,  
14      and if you do I'll sanction you, okay?

15              MR. BURKS:   Well, it was --

16              THE COURT:   That settlement statement is pretty  
17      damn clear to me, and I think that you're on a course that  
18      I've warned you against at the beginning of the hearing.  
19      You're now crossing that line.

20              MR. BURKS:   All right.

21              THE COURT:   Okay?

22              MR. BURKS:   I hear you.

23              THE COURT:   So move along --

24              MR. BURKS:   I hear you.

25              THE COURT:   -- or you will not like the results.

1 MR. BURKS: I will move along and I will not cross  
2 the line.

3 THE COURT: Thank you.

4 MR. BURKS: Thank you, Your Honor. No further  
5 questions, Your Honor.

6 THE COURT: Thank you. Mr. Shannon?

7 MR. SHANNON: I have no further questions, Your  
8 Honor.

9 THE COURT: Thank you, sir. Thank you for coming.  
10 You may step down.

11 THE WITNESS: Thank you, Your Honor.

12 THE COURT: And you're excused by the way.

13 THE WITNESS: Thank you.

14 THE COURT: Mr. Shannon?

15 MR. SHANNON: No further witnesses from us, Your  
16 Honor.

17 THE COURT: Thank you. Mr. Burks?

18 MR. BURKS: Your Honor, I do not have Mr. Choudhri  
19 here and I'm not prepared to put on a case. So --

20 THE COURT: You rest?

21 MR. BURKS: -- no witnesses. I rest.

22 THE COURT: All right. Thank you. Mr. Shannon,  
23 you want to make some argument?

24 MR. SHANNON: Yes, Your Honor. And I do have a  
25 presentation that hopefully will not take too long here, but

1 I just want to summarize what the documents said. I didn't  
2 want to go through with the witnesses through all the  
3 documents, but they are admitted and I'd like to talk about  
4 what they show. If I can have the screen, Your Honor.  
5 Again, Your Honor, the evidence, and I think especially with  
6 the exhibits that we'll go through, showed what we said it  
7 would. The purported note that underlies this Claim Number  
8 7 is unenforceable, and the reason why is because there was  
9 no consideration provided in exchange.

10 I think what the evidence shows is absolutely that  
11 the note did not exist and it was not part of the May 23,  
12 2018 transaction. The seller credit, although the witnesses  
13 didn't know what it means, we'll talk about what it means  
14 and we have some case law that will talk about what it  
15 means, but we do know and Mr. Wyatt testified is that Mr.  
16 Choudhri talked about that as the equity in the property.  
17 And I believe that's what the documents are going to show.

18 The note just wasn't part of that transaction and  
19 it didn't exist 2020. Frankly, it didn't exist until 2021,  
20 and again that's going to be supported by the documents that  
21 we go through and talk about. That note was just created in  
22 2021. But again, even if that's not right, we talked about  
23 the authority to execute the recorded note. Ms. Zaheer said  
24 that Mr. Choudhri did not have authority to act on behalf of  
25 the debtor. Did not have the authority to execute documents

1 in 2018.

2 Naissance Capital Real Estate LLC was the managing  
3 member until 2021. And as the documents will show when you  
4 go through them, Galleria 2425 JV company agreement said  
5 that only the managing member could act on behalf of that JV  
6 entity, which was the sole member of the debtor. And again,  
7 Judge, there is the quasi-estoppel argument.

8 Where that money came from is obvious. It came  
9 from the funds that were made by NBK and by the mezzanine  
10 loan. And those representations were important to the other  
11 lenders, and the documents, as we'll go through that have  
12 already been admitted, show that that was important to those  
13 lenders.

14 Let's talk about the settlement statement first.  
15 It was actually attached to Claim Number 7. Mr. Burks  
16 brought it up at ECF 637-5, and it's been admitted as 692-4.  
17 First of all, why it's relevant, ECF Number 692-5 is the  
18 transcript of the January 31, 2024 hearing. Although Mr.  
19 Choudhri's not here, we do have his testimony from that  
20 hearing in front of this court in this case, it can't be  
21 considered.

22 He said in that transcript that, on Page 73, he  
23 said that the loan over the claim was based -- was "one  
24 account of what was on the closing statement the bank  
25 approved plus accrued interest," which is accounted for.

1 Again, in that same transcript in that same hearing at Page  
2 94 to the beginning of Page 95. It was Ms. Whitworth that  
3 was questioning Mr. Choudhri, and he said kind of about the  
4 different claims that he asserted. And Mr. Choudhri said  
5 that there are two totally separate things.

6 So there's three related. Let me see, four  
7 related. One is the selling entity, which is 2425 WL, which  
8 is the second lien holder. Mr. Choudhri would go on to say  
9 that it's reflected on the closing statement that the bank  
10 approved when the loan was obtained. When you actually look  
11 at the closing statement, I have an excerpt of it up on the  
12 screen, what he's referring, that \$14.7 million number, it  
13 is. It's referenced as a seller credit to the buyer.

14 But what that means is it's a reduction in the  
15 amount due to the seller, not a loan. There is case law  
16 that we put in our briefing and I have it up here, that  
17 Johnson v. Kamisi case, 2024 Delaware CP Lexis 13. It talks  
18 about -- and the whole case was about a seller credit is,  
19 and it's a reduction in the amount due the seller. We can  
20 say, look, it's still -- we're still selling the property  
21 for this, but we're going to reduce. And it makes sense in  
22 this transaction because Mr. Choudhri, whether through an  
23 agent or whatever, was on both sides of it. We heard that  
24 from the testimony.

25 There was no loan by 2425 WL indicated. When you

1 look at the lines 200 through 209, it lists NBK. It lists  
2 that \$51 million loan. It lists the \$16.1 million mezzanine  
3 loan, but it doesn't list a second lien or any loan from the  
4 seller there. And it was required to. It was -- they  
5 filled out a HUD 1 settlement statement, and there is --  
6 there are regulations on how to fill that out. There are  
7 instructions that are promulgated by regulatory agencies and  
8 we have them up here, the critical aspect of it. And  
9 there's also an exhibit.

10 We filed it just so it was in front the Court, but  
11 it has to be on Lines 204 through 209. It's supposed to  
12 indicate any financing arrangements for other new loans not  
13 listed otherwise at Line 202. And it includes financing  
14 from the seller. That's where it's supposed to be. It  
15 should also be listed in Lines 506 through 509. And again,  
16 we go back, Judge, and that is not there. It's simply not  
17 where it's supposed to be. And that's what they say when --  
18 where it was supposed to be. That's what Mr. Choudhri said  
19 it is indicated and it's not.

20 There are also the admissions and the  
21 (indiscernible) discovery that was served on the claimant  
22 here 2425 WL is at ECF 692-25. There were a number of  
23 requests for admission that we had, and it just covers that  
24 those things are not listed on there. The loans from NBK  
25 and the mezzanine lender are listed. The loan -- that loan



1 from 2425 WL is not listed. And I believe -- yeah, and it  
2 even went on in those admissions. Request Number 15 says  
3 that those regulations matter. What was deemed admitted  
4 because there was no response. Request Number 16, that it  
5 should have been listed there. That was admitted.

6 Request Number 17 that any seller financing  
7 should've been listed in Lines 204 through 209. Again, that  
8 was admitted. So the settlement statement doesn't show it  
9 as a loan. I'll also point out what the settlement  
10 statement does show is that there was cash going out in 2425  
11 WL LLC. That was the \$13.7 million. And I understand that  
12 the witnesses got confused when we were talking about 14 --  
13 you know, 13.7, 14.7, but the settlement statement is clear  
14 what happened. The settlement statement is clear, and it  
15 was attached to the proof of claim. It's what the claimant  
16 says happened.

17 That cash went out to the claimant here, so they  
18 are going to be bound by quasi estoppel. That's why they're  
19 bound. They wouldn't be bound if they didn't get anything  
20 out of it, but they did, and they used the settlement  
21 statement as part of the -- how that was induced. And it  
22 was also just -- it was signed by the claimant here through  
23 Adam Broder as you also heard in testimony.

24 Again, these are all supported by admissions as  
25 well. It has been admitted that 2425 WL received \$13.7

1 million. No actual dispute about that. It's been admitted.  
2 And it's been admitted that the source of those funds were  
3 from the loans. So that's the settlement statement and  
4 that's what they based it on, but when you actually get into  
5 the transactional documents, it tells the same story. The  
6 NBK loan agreement admitted at 692-8. I think it's also  
7 been admitted previously in this case.

8           Sections 5.26 and 6.1 they talk about other  
9 indebtedness, and they say there is no other indebtedness  
10 except for this loan, the NBK loan, and in other places it  
11 talks about the mezzanine loan. But it says that's all  
12 there can be. It is a breach of this agreement to have any  
13 other amounts owed. And while that doesn't bind the  
14 claimant necessarily, it is -- it's circumstantial evidence  
15 about what was part of that transaction.

16           There's no reason that anyone else that's part of  
17 that transaction would make it up and pretend that this loan  
18 wasn't made. They would have said that the loan was in  
19 there if it was. We don't have any reason to think that  
20 they would not put it in there. Again, that's admitted.  
21 It's admitted that the NBK loan agreement prohibits a second  
22 lien and prohibits this note that underlies Claim Number 7.

23           It goes on. There's other provisions of the NBK  
24 loan agreement. Very standard provisions that say, hey, no  
25 contractual obligations. Those contractual obligations

1 include things that would be covered by the note, by the  
2 purported note underlying Claim Number 7. Again, it's a  
3 belt-and-suspenders type of thing.

4 Also attached as part of that NBK loan agreement  
5 is a -- the borrower's organizational structure. That was  
6 part of the loan agreement. It comports exactly with what  
7 you heard in testimony today from Ms. Zaheer. That was the  
8 understanding then, it's the understanding now. That  
9 description even includes the loans that were made. It  
10 includes the senior debt. It includes the mezzanine debt.  
11 And it also includes the equity in the property right there  
12 at the top. And that's been -- at least that this is an  
13 accurate description has actually been admitted.

14 The next thing is the NBK loan memo ECF 692-7,  
15 particularly Slide 10. We didn't get to talk about it with  
16 the witness because Mr. Choudhri wasn't here, but again, it  
17 describes the loans that were taken out. It describes the  
18 loan to value. It describes that it was important to NBK  
19 that there was no lien at the debtor level, at the property  
20 level. And that even the mezzanine debt was at a parent  
21 level, and that made a difference.

22 Mr. Choudhri had talked about this loan agreement  
23 before or this loan memo before at the January 31, 2024  
24 transcript. And at that hearing that's reflected in the  
25 transcript Mr. Choudhri testified at that hearing that that

1 memo was created by the bank and it broke all of -- I'll  
2 quote it, that they did before they closed the loan, that  
3 broke all the -- a lot of the structure down. That's -- Mr.  
4 Choudhri was talking about the loan memo when he referenced  
5 that. Again, this is -- it's a common thing throughout the  
6 loan documents, the mezzanine loan agreement.

7           It talks about the mortgage lender, the mortgage  
8 borrower because again, the other debt mattered to that  
9 transaction, what other debt there mattered for a mezzanine  
10 lender especially because even unsecured debt at the  
11 subsidiary level comes before the mezzanine loan. It  
12 mattered. They talked about the mortgage borrower.

13           Particularly they talked about that the borrower,  
14 which was the JV entity, had to ensure that the mortgage  
15 borrower, which was the debtor, observe, perform, and  
16 fulfill each and every covenant, term, and provision of each  
17 mortgage loan document. Again, it's important because the  
18 requirements for that transaction -- the requirements from  
19 the mezzanine loan transaction really incorporated in the  
20 NBK loan agreement again that there was no other debt. It  
21 was important to that transaction.

22           Another section that includes that is Section  
23 4.2.1 of the mezzanine loan agreement. Same kind of idea.  
24 Talks about the mortgage borrower who is the debtor. And it  
25 says it cannot mortgage, grant, bargain, encumber, pledge,

1 assign, or transfer the property. Property was at issue in  
2 that. And again, for Claim Number 7 to be accurate, this --  
3 all these documents had to be inaccurate. They had to be  
4 hiding something that they had no reason to hide.

5 4.2.2 of the mezzanine loan agreement, same thing.  
6 It talks about leads, no leads. Although we're not  
7 challenging the deed of trust per se, the note and the deed  
8 of trust together constitute a lien. It was not a permitted  
9 encumbrance under that agreement.

10 Lastly, Judge -- or maybe not lastly, but we have  
11 the deed of trust running into a problem here. It's only  
12 letting me go one way. That's fine, Judge. When you  
13 actually look at the deed of trust, when you actually look  
14 at the document, it indicates that -- it indicates in the  
15 jurat that it is executed in 2021. Let's see if I can get  
16 this another way. We had the deed of trust up here.

17 Critically, this jurat indicates that this deed of  
18 trust was created in 2021 and it gets it right here. That  
19 is when this document was acknowledged. It's -- and frankly  
20 it's when it was created. And you can see that by the  
21 document control numbers throughout the document. This  
22 document control number is the same throughout. The jurat  
23 was at the same time as the document was created, and it  
24 purports to be of even date with the note. The note says  
25 that it's of even date.

1           It references the deed of trust in the note. And  
2   it says that it actually incorporates the terms referring  
3   the deed of trust into the note. It couldn't have done that  
4   if the deed of trust was not yet created. That's why the  
5   deed of trust is relevant. It's relevant because it's  
6   referenced in the note, and that note and deed of trust were  
7   created the same day. They were created in 2021.

8           Going as far as -- the last thing I think from the  
9   documents is going to be the signatures, one other material  
10   document. Every other material document that was related to  
11   the May 23, 2018 transaction that's signed by Azeemeh  
12   Zaheer, these two documents, and we have two of them, were  
13   executed by Ali Choudhri. And at least with the deed of  
14   trust, it was executed by Galleria West Loop Investments 2  
15   LLC. We know that they didn't become the managing member of  
16   the JV entity until 2021.

17           I think that was actually accurate. I think it  
18   was Ali Choudhri as manager of Galleria West Loop  
19   Investments 2 LLC, the managing member of the JV entity. I  
20   think that was true, but it was in 2021. The purported note  
21   also signed by Ali Choudhri doesn't say that. Is of even  
22   date. I think it was also -- I think the evidence shows it  
23   was also the same date. I think that's the only inference  
24   that can be drawn. Again, every document signed by Azeemeh  
25   Zaheer, including the settlement statement.

1           What the claimant wants you to believe is that  
2   this one exception that isn't reflected in the documents  
3   that these witnesses have testified did not exist or were  
4   not part of this 2018 transaction did not exist in 2020,  
5   that this exception -- this is the exception. We don't have  
6   any reason to believe that, Judge. And that again included  
7   documents after the May 23, 2018 transaction. The tax lien,  
8   the tax lien contract with Moussa Hussein signing it. Those  
9   were signed in 2020 again through Naissance Capital Real  
10   Estate LLC as Ms. Zaheer testified was part of that  
11   Naissance Capital Real Estate entity.

12           So from 2018 through 2020, same -- again, always  
13   Naissance Capital Real Estate signing it. These were  
14   admitted. I mean, the signatures were admitted. It was  
15   admitted that Choudhri didn't sign and give those other  
16   documents.

17           The corporate authority, Judge, as we've talked  
18   about, you heard Azeemeh Zaheer testify about, we went  
19   through some of these. Mr. Choudhri did not have authority  
20   prior to 2021. The management agreement or the 2425 JV LLC  
21   company agreement talked about the managing member and said  
22   it's the Naissance member. And it also said that only the  
23   Naissance member, only the managing member could take any  
24   actions on behalf of that JV entity. And I know this can't  
25   be a surprise because it's going to argued in our brief.

1           Again, Ms. Zaheer confirmed that, confirmed that  
2       was actually the case. But as, you know, it's reflected in  
3       the documents as well. Wasn't until 2021 that it changed as  
4       reflected in the unanimous consent at ECF 692-19 as Ms.  
5       Zaheer testified to and clarified that it was on January 18  
6       of that year that the change happened. Again, admitted  
7       through the request for admission. These can't be disputed.

8           And I think we also heard a little bit about the  
9       motive for all of this. We heard about the Stage Doors'  
10      bankruptcy. Admitted as ECF Number 692-20 is the notice of  
11      rejection that we -- that is a document that effectuated  
12      what we heard about losing that tenant. We have the  
13      document from another judge in this court, I guess former  
14      judge. So you have that in -- it's reflected in documents  
15      exactly what you heard the witnesses talk about.

16           After that is when the dispute with NBK started.  
17      The document admitted as 692-21 is when NBK did their  
18      foreclosure. This was in September of 2021, only a few  
19      months after the -- you know, after the deed of trust was  
20      actually filed, whenever it was. The petition was assigned  
21      from that litigation. It was ultimately removed up here  
22      that you've heard a lot about, Judge. That happened in  
23      September of 2021 as well, only a few months after the deed  
24      of trust was recorded.

25           The other thing that it shows is why this was



1     being done.  Soon after around the same time in September of  
2     2021, 2425 WL filed a notice of foreclosure sale.  They knew  
3     they were second lien, but they went and they did their  
4     notice of foreclosure sale.  That's at ECF Number 692-23.  
5     The critical thing is what happened after because that was  
6     one thing.  At 692-24 is an unrecorded trustee's deed.  Not  
7     only did 2425 WL do their notice of foreclosure, they  
8     actually went through with it.  I think they didn't record  
9     it, and that's what happened.  It's an unrecorded deed right  
10    now.  And that's at 692-24.

11             I think they did all that, Judge.  And the reason  
12    this claim was filed was to get an advantage in this  
13    bankruptcy case.  You've seen all the actions that happened  
14    in this case, and the reason for the claim was to have the  
15    guise of a junior lienholder, a junior secured creditor or  
16    potentially secured creditor and the advantage that would  
17    give in bankruptcy.

18             It was designed to say this is a serious creditor  
19    that needs to be really taken into account, and it was.  It  
20    was taken into account by this court.  It was taken into  
21    account by everybody.  But that was the reason for it even  
22    though it was entirely wholly unsecured.  Even though they  
23    weren't going to get anything in the case, that's why it was  
24    done.  But at the bottom line, it is just an unenforceable  
25    claim.  There is no enforceable claim against the debtor or

1 the debtor's estate, and for that reason Claim Number 7  
2 should be disallowed. Thank you, Your Honor.

3 THE COURT: Thank you. Mr. Burks?

4 MR. BURKS: Thank you, Judge. Your Honor, as I  
5 stand here now I stand in the same position I stood in two  
6 hours and eight minutes ago, and that is proof of Claim  
7 Number 7 has been cancelled and extinguished by the plan.  
8 The requested relief by the trustee is to deny the claim  
9 against the estate in full. That request I believe is moot  
10 because it's already been cancelled and extinguished.

11 With respect to the various commentary, I want to  
12 first personally apologize for taking the courses of action  
13 that angered the Court. Or concerned the Court is a better  
14 word I believe. And I do personally apologize for that.  
15 You're right. I have a zealous representation of my client  
16 in mind, and I've tried to balance that zealousness with  
17 comments the Court has made. And if I stepped on or near a  
18 line, I do apologize, Your Honor.

19 One thing, though, there was comments made, and  
20 the question becomes at 3:30 yesterday I feel on my sword.  
21 I said, you know, I've read the judge's opinion in another  
22 case. I've looked at the plan. I've looked at the fact  
23 that it's substantively consummated and in effect. Well, I  
24 don't have a claim anymore. And then after 3:30 we're still  
25 going forward. So why are we going forward? Well, I don't

1 know. But I will tell you this. It's all right for me to  
2 tell the Court that Mr. Choudhri, if he had been here, his  
3 position in filing the proof of claim was he believed that  
4 seller credit was a loan. That's what he says.

5 It's all right for me to say that. It's all right  
6 for someone to disagree or overrule that position. It's all  
7 right for me to question witnesses in support of my client's  
8 position. And I've done the best I can. Of course I'm  
9 unprepared because I came here with a cancelled and  
10 extinguished claim. So I did not and would not and could  
11 not come before you and say, Judge, I want a trial to allow  
12 my claim that's been cancelled and extinguished. I don't  
13 want to do that, Your Honor.

14 So I think the ruling here is it started with  
15 cancelled and extinguished. Everything else I don't know  
16 that you have justiciable cause of action to actually  
17 adjudicate. And I don't know what all the testimony was  
18 about. That said, I accept that there is a confirmed plan,  
19 which is subject to appeal, but which is binding on the  
20 parties that has cancelled and extinguished this claim. And  
21 I thank you for your patience, Judge, and I thank you for  
22 your time.

23 THE COURT: All right. Thank you. All right. So  
24 before the Court is the objection and proof of claim, which  
25 is at ECF Number 402. After considering the pleadings,

1 evidence, testimony, and the arguments of the parties, the  
2 Court makes the following findings of fact and conclusions  
3 of law under Federal Rules of Civil Procedure 52 as  
4 incorporated by the Federal Rules of Bankruptcy Procedure  
5 7052 and 9014. To the extent that any finding of fact is  
6 construed to be a conclusion of law, it is adopted as such.  
7 To the extent that any conclusion of law is construed to be  
8 a finding of fact, it is adopted as such.

9           The Court reserves the right to make any  
10 additional findings and conclusions as may be necessary or  
11 as requested by any party. The Court further reserves the  
12 right to supplement the findings of fact and conclusions of  
13 law and to issue a written opinion. I'm going to ask Mr.  
14 Shannon to draft proposed findings of fact and conclusions  
15 of law, and I specifically reserve the right to issue a  
16 written opinion after I've received those. All right?

17           Let me note for the record that there is a  
18 shifting of the burden of proof at various times during an  
19 objection to claim. A proof of claim has evidentiary  
20 effect. The objecting party has to come forth with  
21 sufficient evidence to overcome the evidentiary effect and  
22 then the burden moves back to the claimant.

23           I think quite clearly there is clear and  
24 convincing evidence that the claim should be disallowed, all  
25 right? The claim, which amended at ECF Claim 7-2 is for

1 22,968,231.58. The Court makes the following findings. As  
2 to the promissory note that's attached to 7-2, which is  
3 dated May 23, 2018, the Court finds that it is not part of  
4 the 2018 transaction which was the purchase of the property,  
5 which is reflected in the transactions at ECF 692-8 to 692-  
6 12.

7 The Court also finds there is no consideration for  
8 the promissory note, that it is in fact a fraudulent note,  
9 and that Mr. Choudhri at the time that it was purportedly  
10 signed had no authority to sign it.

11 I also will make the same conclusions about the  
12 deed of trust. The deed of trust, which is attached to the  
13 proof of claim, was not part of the 2018 transactions  
14 referenced by the ECF numbers I mentioned earlier 692-8 and  
15 692-12. There was no consideration for the deed of trust.  
16 There was no loan. It is in fact a fraudulent transaction.  
17 Mr. Choudhri had no authority to sign it. All right?

18 I also think by clear and convincing evidence that  
19 this is a false proof of claim, and I'm going to remind the  
20 parties that it is a criminal offense to file a false proof  
21 of claim under 18 USC 152(4). And I intend to make a  
22 criminal recommendation on this case based on the proof of  
23 claim that's been filed. I understand why Mr. Choudhri  
24 didn't show up for trial. If he had been put on the stand,  
25 he would've been crucified by the testimony that I heard

1 today.

2 And I think that more than anything, Mr. Burks, it  
3 confirms my prior opinion that I've written about, the prior  
4 opinion I've written about by Mr. Murray, that Mr.  
5 Choudhri's a person whose truth and voracity is subject to  
6 great doubt, all right? And I'll make that finding on the  
7 record. All right? So I'll enter an order after I see Mr.  
8 Shannon's proposed findings of fact and conclusions of law.  
9 That concludes the objection to Claim Number 7.

10 Mr. Shannon, let's take a short break. We'll come  
11 back with whichever claim you want to go on next. Thank  
12 you. Thank you all for appearing.

13 BAILIFF: All rise.

14 THE COURT: I'll come back at 11:30.

15 (Recess)

16 BAILIFF: All rise.

17 THE COURT: Please be seated. All right. It's  
18 11:30 a.m. and we're back on the record on Friday, September  
19 the 6th. Mr. Shannon, which claim objection do you want to  
20 take up next?

21 MR. SHANNON: Your Honor, we'll go to Claim Number  
22 22 asserted by Ali Choudhri.

23 THE COURT: All right. Thank you. You want to  
24 make an opening statement at it relates to that.

25 MR. SHANNON: Your Honor, we have talked. Me and

1 Mr. Burks have talked. He has agreed that based on the  
2 pleadings we have rebutted the presumption and that he is  
3 going to go first. He's going to agree that we have  
4 rebutted the presumption that we will --

5 THE COURT: So the burden's just back to him, so  
6 we're going to let him go first. All right. Mr. Burks, do  
7 you want to make an opening statement?

8 MR. BURKS: No opening statement, Judge. May I  
9 just -- which one are we on?

10 MR. SHANNON: 22.

11 MR. BURKS: May I just move into it, Your Honor?

12 THE COURT: Well, if you want to call witnesses.  
13 If you don't want to make an opening, then call witnesses.

14 MR. BURKS: Well, at this point before calling any  
15 witnesses, Judge, I offer into evidence Exhibits 1, 2, and  
16 3.

17 THE COURT: ECF number?

18 MR. BURKS: ECF Numbers 676-1, 2, and 3.

19 MR. MURRAY: And Your Honor, we -- the trustee  
20 objects to the admission of those exhibits at this time.

21 THE COURT: All right. Then you need a witness.

22 MR. BURKS: Your Honor, I do agree on the base of  
23 the proof of claim and on the pleadings that the burden of  
24 proof has shifted to me. I've offered my exhibits.

25 THE COURT: Call your witness.

1 MR. BURKS: I don't have a witness, and therefore

2 --

3 THE COURT: You lose.

4 MR. BURKS: -- I concede. Yes.

5 THE COURT: Okay. All right. So at this point in  
6 time --

7 MR. BURKS: I concede that --

8 THE COURT: -- based on the representation that  
9 the trustee has met their burden and the representation that  
10 you have no witnesses to call to rebut that burden, I am  
11 going to by order sustain the objection to Claims Number 21  
12 and 22 of Ali Choudhri at ECF Number 43. I'll do that --  
13 402 -- I'll do that by order. All right. Thank you.

14 MR. BURKS: Excuse me. There is one housekeeping  
15 matter. 21 is not before you today. 21 was previously  
16 withdrawn by specific terms under an order signed by you.

17 THE COURT: Mr. Shannon, do you agree with that?

18 MR. SHANNON: Yes, Your Honor.

19 THE COURT: All right. Then I'll only deny Claim  
20 Number 22. Thank you. All right. You want to move onto  
21 the next claim?

22 MR. SHANNON: Yes, Your Honor. And just so you  
23 know, for Claims Number 23 and 24 we have also agreed that  
24 the trustee has rebutted the presumption based on the papers  
25 and the proof of claim. And I suspect it's going to go the



1 same way, Your Honor.

2 THE COURT: Mr. Pope, I think you represent  
3 Jetall, do you not?

4 MR. POPE: I do, Your Honor. Except I --

5 THE COURT: Come to the podium, please.

6 MR. POPE: I do, Your Honor. And I had this  
7 morning to retain to appear on behalf of Jetall. After  
8 further looking at the proof of claims beyond the claims  
9 register, they were actually filed Jetall Capital and not  
10 Jetall Company, and I do not represent Jetall Capital. So  
11 we left it up to Mr. Burks who's representing the other  
12 party.

13 THE COURT: Mr. Burks, you going to make an  
14 appearance for Jetall Capital?

15 MR. BURKS: Yes, Your Honor. My name is Greg  
16 Burks, B-U-R-K-S, on behalf of claimant Jetall Capital, and  
17 I'm taking them one at a time. I think we're on Claim 23.  
18 Is that correct?

19 THE COURT: There are -- it's an objection to  
20 Claim 23 and 24. Claim 23 is the claim by -- it says Jetall  
21 Companies Inc. and 24 says Jetall Companies Inc. too, at  
22 least on the claims register.

23 MR. BURKS: Yeah. I don't know why it says that.  
24 They are separate claims, Your Honor.

25 THE COURT: Bear with me for one second. Let me

1 look at the original claims. The docket could be right.  
2 Jetall Capital LLC filed the first claim at 23, and Jetall  
3 Capital LLC filed the second claim at Claim Number 24. And  
4 it looks like for purposes of the docket entry, Mr. Baker is  
5 at error in how he entered the claim.

6 MR. BURKS: Probably.

7 THE COURT: Yeah.

8 MR. BURKS: With respect to 23 and 24, Your Honor,  
9 I do stipulate that on the proof of claims and pleadings the  
10 burden of proof has shifted to the claimant. I agree with  
11 Mr. RJ Shannon on that point. At this time I offer -- on  
12 Claim 23 I offer Exhibits 1 through 3.

13 THE COURT: Again, what ECF number?

14 MR. BURKS: Thank you, Judge. ECF Number 696-1,  
15 -2, -3.

16 THE COURT: Is there any objection to those  
17 exhibits?

18 MR. MURRAY: Yes, Your Honor. The trustee objects  
19 to the admission at this time.

20 THE COURT: All right. Then you need a witness,  
21 Mr. Burks.

22 MR. BURKS: We don't have a witness.

23 THE COURT: Do you have a witness or don't have a  
24 witness?

25 MR. BURKS: I do not have a witness.

1           THE COURT: All right. Then based on that  
2 announcement and your inability to overcome the presumption  
3 that you stipulate on the record, I will deny the claim --  
4 or sustain the objection to Claim Number 23. Let's move  
5 onto Claim Number 24.

6           MR. BURKS: Yes, Your Honor. Your Honor, as Mr.  
7 Shannon said a moment ago on 23, and for the record let me  
8 make it clean, Mr. Shannon stated that he and I had talked.  
9 And that based on the proof of claim, the face of the proof  
10 of claim, and the documents offered by both -- that would be  
11 offered by both parties, that he and I stipulate that the  
12 trustee has met its initial burden of proof, and that burden  
13 of proof has shifted to the claimant. Therefore, I waive  
14 opening statement and I offer Claimant's Exhibits 1, 2, 3,  
15 4, and 5 found at ECF Numbers 695-1, -2, -3, -4, -5.

16           THE COURT: Is there any stipulation to the  
17 admissibility?

18           MR. MURRAY: No, Your Honor. The trustee objects  
19 to the admission at this time.

20           THE COURT: All right. So you need a witness, Mr.  
21 Burks.

22           MR. BURKS: Your Honor, I do not have a witness.

23           THE COURT: All right. So based on that  
24 announcement, based on the fact that there are no witnesses  
25 shifting the burden back to the claimant, I'm going to

1 disallow the Claim at 24-1. I'll enter an order as soon as  
2 I step down from the bench. All right.

3 MR. BURKS: That concludes?

4 THE COURT: I think that concludes, but let me go  
5 to Mr. Shannon first to make sure there's nothing else.

6 MR. SHANNON: That is correct, Your Honor.

7 THE COURT: All right. Let me just make this  
8 comment on the record, okay? I'm really, really, really  
9 concerned when people just file claims and they think they  
10 can file a claim and there's no rational basis for it, Mr.  
11 Burks, okay? And like I said on the first claim, I think  
12 the evidence is pretty clear. I think it's not only clear,  
13 it's crystal clear.

14 And if parties are going to make false claims on  
15 the record, then they can expect that I'm going to make a  
16 referral, a very, very hearty referral to the attorney  
17 general and ask that these matters be prosecuted. So just  
18 make your clients aware that there is criminal liability for  
19 filing false proofs of claim, all right? Thank you.

20 MR. BURKS: Understood.

21 THE COURT: All right. We're adjourned. Thank  
22 you.

23 MR. SHANNON: Thank you, Your Honor.

24 (Proceedings adjourned at 11:37 a.m.)

25

CERTIFICATION

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I certify that the foregoing is a correct transcript from  
the electronic sound recording of the proceedings in the  
above-entitled matter.

A handwritten signature in dark ink, reading "Sonya M. Ledanski Hyde". The signature is written in a cursive, flowing style. The first name "Sonya" is prominent, followed by the middle initial "M.", the last name "Ledanski", and the surname "Hyde".

Sonya Ledanski Hyde

Veritext Legal Solutions

330 Old Country Road

Suite 300

Mineola, NY 11501

Date: September 16, 2024

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS**

In Re: Galleria 2425 Owner, LLC  
Debtor

Case No.: 23-34815

Chapter: 11

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**NOTICE OF FILING OF OFFICIAL TRANSCRIPT**

An official transcript has been filed in this case and it may contain information protected under the E-Government Act of 2002, and Fed. R. Bank. P. 9037.

Transcripts will be electronically available on PACER to the public 90 days after their filing with the court. To comply with privacy requirements of Fed. R. Bank. P. 9037, the parties must ensure that certain protected information is redacted from transcripts prior to their availability on PACER.

If redaction is necessary, the parties must file a statement of redaction listing the items to be redacted, citing the transcript's docket number, the item's location by page and line, and including only the following portions of the protected information. This statement must be filed within 21 days of the transcript being filed. A suggested form for the statement of redaction is available at <https://www.txs.uscourts.gov/>.

- the last four digits of the social security number or taxpayer identification number;
- the year of the individual's birth;
- the minor's initials;
- the last four digits of the financial account number; and
- the city and state of the home address.

Any additional redaction requires a separate motion and Court approval.

A party may review the transcript at the Clerk's Office public terminals or purchase it by following the instruction on our website at <https://www.txs.uscourts.gov/> or by calling (713) 250-5500 . A party is only responsible for reviewing the:

- opening and closing statements made on the party's behalf;
- statements of the party;
- testimony of any witness called by the party; and
- any other portion of the transcript as ordered by the court.

Redaction is your responsibility. The Clerk, court reporter, or transcriber will not review this transcript for compliance.

Nathan Ochsner  
Clerk of Court



and 60(b), 2425 WL, LLC files this Motion for Reconsideration and Relief from Judgment and would respectfully show as follows:

### **INTRODUCTION**

On September 9, 2024, the Court entered an Order Disallowing Proof of Claim and Referral to United States Attorney (Dkt. No. 717). That order disallowed Proof of Claim 7 (as amended by Claim 7-2), in the amount of \$22,968,231.58, which was filed by 2425 WL, LLC. In that order, the Court deemed the Promissory Note and Deed of Trust on which the claim was based to be “fraudulent.” (Order at 1, attached as Exhibit A) The Order also refers the matter to the United States Attorney for investigation. (*Id.*) And the Order levies a number of personal accusations against Ali Choudhri, 2425 WL, LLC’s manager, calling him a liar, a malingerer who faked a stroke, and a forger who made up the transaction at the core of this case. (*See Op.* 1-3)

Choudhri and 2425 WL, LLC seek reconsideration to set the record straight: Neither the Promissory Note nor the Deed of Trust underlying 2425 WL, LLC’s claim are fictitious or fraudulent. The loan represented by these documents is entirely real—so real, in fact, that when Galleria Owner 2425, LLC became delinquent in making payments on that loan, Choudhri was forced to put its property into foreclosure. Choudhri himself is neither a “forger” nor a “liar,” and he has no fear of testifying under oath before the Court. But his participation in this case has been hampered by a very real stroke—diagnosed by multiple physicians that were completely independent of Choudhri himself.

Choudhri respectfully submits that the Court’s conclusions to the contrary are based on a misunderstanding of the facts. And invalidating 2425 WL, LLC’s multi-million-dollar



claim serves solely to facilitate the Chapter 11 Trustee’s misguided and self-serving effort to moot 2425 WL, LLC’s appeal, which would lead to an unfortunate partisan miscarriage of justice.

In sum, disallowing a claim is one thing, but conclusively finding someone has committed “fraud” is an entirely different matter. Choudhri and 2425 WL welcome a re-examination on the merits – and welcome an opportunity to testify and answer any questions the Court may pose – as Choudhri seeks an opportunity to clear his good name. Upon closer examination, the Court will see that only Choudhri committed no fraud and told no lies, but the claim is good and should not be disallowed. The Court should therefore grant this motion for reconsideration, vacate its order, and reinstate 2425 WL, LLC’s claim.

### **BACKGROUND**

The transaction at the center of this bankruptcy—and at the center of 2425 WL, LLC’s claim—began when Choudhri, who owns and controls 2425 WL, LLC, wanted to refinance the loan on the company’s commercial building: One West Loop Plaza, designed and built by the world-renowned architect I.M. Pei. (Dkt. No. 635-9 at 8) Choudhri faced an unfortunate obstacle in this effort: lenders were reluctant to provide a loan to refinance the property due to a completely fictitious lien that had been placed on the property by Choudhri’s purported wife Hira Azhar. (Affidavit of Ali Choudhri, Ex. 2 ¶ 2) That lien was eventually found to be “null and void.” (Ex. 3 at 1 [Joint Motion to Compel] (noting that Azhar had placed a Notice of Lis Pendens on “2425 West Loop South, Houston, Texas

77027); *see also* Ex. 3 at 1 [Ex a final judgment] (deeming all liens filed by Azar to be “null and void.”)

National Bank of Kuwait, S. A.K.P., New York Branch (“NBK” or “the Bank”) was willing to finance the loan. But the parties had to find a way to free themselves of Azhar’s meritless claims. The parties eventually agreed that Choudhri would create a new entity—Galleria 2425 Owner, LLC—that would not be burdened by the fictitious lien. The Bank would extend the loan to the new entity, which would use the loan to help finance a purchase of the property from 2425 WL, LLC. (Ex. 2 ¶3) As originally proposed, this transaction would involve NBK providing a \$52 million first-priority mortgage loan to the buyer, and the buyer would come up with another \$29.9 million, financed partially by a mezzanine loan from NBK’s Geneva division on behalf of NBK’s private banking clients. (Dkt. No. 635-9 at 10)

This original plan is reflected in a presentation that officials within NBK created as part of their internal approval process:

Source of Funds		%	Uses of Funds	
Senior Loan	\$ 51,675	63%	Purchase Price	\$ 79,500
Cash Equity	\$ 29,905	37%	Reserves & Costs	\$ 2,080
<b>TOTAL</b>	<b>\$ 81,580</b>			<b>\$ 81,580</b>

(Dkt. No. 635-9 at 10) In that same presentation, the Bank recognized that Choudhri-owned entities would be on both sides of the transaction. Indeed, the Bank acknowledged that the cash that would go to purchasing the property—\$79.5 million—was far “lower than” the property’s appraised value of \$96 million, because the transaction was an internal sale, and Choudhri’s companies—which NBK collectively referred to as “Jetall”—would not only

be on the selling side of the transaction but also be “retain[ing] an ownership interest” in the entity that was formed to be the buyer. (*See id.*) Indeed, the Bank considered it a benefit that Choudhri would remain in the deal. (*Id.*)<sup>1</sup>

For a while, all went according to this plan as originally proposed. But a hiccup arose as closing approached. The new buyer, Galleria 2425 Owner, LLC, could not come up with its full \$29.9 million contribution toward the \$81 million purchase price; it was only able to come up with \$16.1 million in mezzanine financing. (Buyer Signing Statement, Ex. 5 at 1 (reflecting “\$16.1 mezzanine loan”); Dkt. No. 692-12; Ex. 2 ¶4) That left a shortfall (after certain offsets) of \$14.7 million. (Ex. 5 at 2).

But the parties could not simply reduce the purchase price to reflect this shortfall. The Bank’s loan had already been approved at the \$79.5 million purchase price and the seller had paid a title policy for \$79.5 million. (Ex. 2 ¶ 5) So the parties had to come up with something that would cover the \$14.7 million shortfall. Accordingly, the seller, 2425 WL, LLC, allowed the sale to be consummated while retaining a credit for the unpaid balance of the purchase price. (*Id.*)

The undisputed evidence in this case demonstrates the existence of this \$14.7 million credit. The seller’s closing statement reflects the “CREDIT” that 2425 WL, LLC, as “SELLER,” extended to Galleria 2425 Owner LLC, as “BUYER”—

518	SELLER CREDIT TO BUYER	\$14,730,332.38
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<sup>1</sup> As this Court is aware, it is not uncommon for a party – in this case Choudhri – to wear multiple “hats” in a transaction of financing. For instance, owners – as equity holders – often make loans to a company, which is not just perfectly permissible, but often required lest the business fail.

(Dkt No. 635-5 at 1) And it is clear that the buyer used this credit to finance the purchase prices, as reflected on the Buyer's Settlement Statement, which shows that the Buyer used "Cash From Borrower" in the amount of \$14,730,332.38 (the same amount as the "SELLER CREDIT TO BUYER") to finance the transaction.

303. Cash From Borrower	\$14,730,332.38	6
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(Ex. 5 at 2)

And that is why 2425 WL, LLC as seller received only \$13 million out of the deal.

603. Cash To Seller	\$13,720,254.15
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(Dkt. No. 625-5 at 1)

There is no question that the parties contemplated that this "credit" would be a loan because money extended on "credit" must be paid back. Indeed, that credit must be considered a loan as a matter of law, because any time the buyer falls short in providing the contract price, Texas law imposes an implied vendor's lien "for the amount of the unpaid contract price." Tex. Prop. Code § 5.079. And that lien remains in place until the contract price is repaid. *Id.*

The parties also treated that "credit" as a loan throughout the life of this case. This obligation is reflected in a Note and Deed of Trust executed by Galleria 2425 JV, LLC. And Choudhri himself always treated the loan as a real obligation that had to be paid back. So real, in fact, that he foreclosed on it when the buyer was not able to pay it back after the loan matured in 2021. (Ex. \_\_\_ at 13 [Sept. 6, 2024 Hr'g Tr.]). Choudhri had the property posted for foreclosure on X date, 2021. (Dkt No. 635-6) And the foreclosure proceeded all

the way through a foreclosure sale, which was only halted after 2425 WL, LLC and the owner agreed to a forbearance.

The Bank itself has likewise recognized the existence of the loan since it was created. The Bank did not challenge the loan's existence when 2425 WL, LLC posted the property for foreclosure on the basis of its junior secured interest. Nor did the Bank challenge the existence of the loan when 2425 WL, LLC used it as the basis to credit-bid at the foreclosure sale and purchase the sale. And indeed, the Bank did not challenge the existence of that loan in this case. And that is because the Bank recognized the loan to exist.

There was therefore no basis for the Court to disallow the claim asserted in bankruptcy for the unpaid balance of that loan—much less deem that loan to be fraudulent. Both 2425 WL, LLC and Choudhri respectfully submit that the Court erred in disallowing that claim. And they therefore ask that the Court reverse that decision on reconsideration.

## **ARGUMENT**

### **I. Legal Standard.**

Under Fed. R. Civ. 59(e), which is made applicable in bankruptcy by Fed. R. Bankr. Proc. 9023, a party may file a motion to alter or amend a judgment no later than 28 days after entry of the judgment. Motions to alter or amend the judgment should be granted when there exists “a manifest error of law or fact,” so as to enable the court to correct its own errors and thus avoid unnecessary appellate procedures. *Trevino v. City of Fort Worth*, 944 F.3d 567, 570 (5th Cir. 2019); *see also Kyle v. Texas*, No. 04-06-00762-CV, 2006 WL 3691204 (W.D. Tex. Oct. 31, 2006) (granting a motion to reconsider under FED. R. CIV. P.

59(e) and reversing previous denial of a motion to remand based on a manifest error of law)). A court has discretionary authority to amend its prior decision. *See Weber v. Roadway Exp., Inc.*, 199 F.3d 270, 276 (5th Cir. 2000).

Fed. R. Civ. P. 60(a), made applicable in bankruptcy by Fed. R. Bankr. Proc. 9024, further provides that “[t]he court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice.” And under Fed. R. Civ. P. 60(b), the Court may relieve a party from a final judgment for a variety of reasons, including “mistake, inadvertence, surprise, or excusable neglect,” or “any other reason that justifies relief.” Fed. R. Civ. P. 60(b)(1) & (6). Rule 60(b)’s standards are to be “liberally construed in order to achieve substantial justice,” *Seven Elves, Inc. v. Eskenazi*, 635 F.2d 396, 402 (5th Cir. 1981), and they “vest[] power in courts adequate to enable them to vacate judgments whenever such action is appropriate to accomplish justice.” *Klapprott v. United States*, 335 U.S. 601, 614-15 (1949). District courts therefore have “great latitude” in deciding whether to vacate orders or judgments under Rule 60(b). *Bakery Machinery & Fabrication, Inc. v. Traditional Baking, Inc.*, 570 F.3d 845, 848 (7th Cir. 2009).

## **II. The Court should vacate its Order Disallowing Proof of Claim and reinstate Claim 7.**

The Court should employ the standards of Rules 59(e), 60(a), and 60(b), and vacate its Order Disallowing Proof of Claim, because that decision was the result of multiple factual and legal mistakes.

**A. The Court’s decision to disallow 2425 WL, LLP’s claim was based on a misimpression of the facts.**

The Court disallowed the claim at issue in this case because it deemed the Promissory Note and Deed of Trust submitted to support that claim to be “fake” or fraudulent.” (Order at 1) That conclusion results from an unfortunate misimpression of the evidence in this case.

Courts generally—but bankruptcy courts in particular as courts of equity—seek to get to the merits of a matter, especially so if the Court thinks “fraud” may have been committed. Applied here, when the Court looks to the *substance* of what transpired, not only was there no fraud, but 2425’s claim should be allowed. The *sine quo non* of the transaction is actually remarkably straightforward

**1. The Court misinterpreted the evidence that supporting the existence of 2425 WL, LLP’s loan and the validity of the documents evincing it.**

There is nothing fraudulent about the Promissory Note, the Deed of Trust, or the underlying loan they represent. That loan arose as a matter of law under Tex. Prop. Code § 5.079 when Galleria 2425 Owner, LLC was unable to pay the balance of the contract price to purchase One West Loop Plaza. That loan is also substantiated by documents outside the Note and Deed of Trust themselves—including both the buyer’s and seller’s versions of the settlement statement issued at closing. And the loan has been repeatedly acknowledged to be valid by the Bank when they approved the closing statement, and when they acknowledged 100% of the cash from the buyer came from the Seller. The buyer contributed zero cash in the transaction; all the cash came from the Seller.

The Court evinced concern that the Promissory Note and Deed of Trust reflecting

the loan were not recorded until 2021, while the loan itself arose in 2018. (Order at 1) It is hard to understand how these documents—which were created, at the latest, years before Galleria 2425 Owner, LLC went into bankruptcy, could constitute part of a scheme to “present[] a false claim” in that bankruptcy. (Order 1 & n.1) (quoting 28 U.S.C. § 152) And in any event, the mere passage of time between when the loan arose and these documents were recorded is no indication that the loan itself was fraudulent or even suspicious. Even if these documents were not executed until 2021, they merely memorialized and formalized a loan that has been acknowledged to exist since 2018—and an implied obligation that the Buyer assumed in 2018 under the Property Code when it failed to deliver the full contract price at closing. Memorializing the loan after the fact does not constitute fraud. It merely reflected recognition of the underlying economic reality that occurred years before.

While it certainly would have been better for Galleria 2425 Owner, LLC to have filed the Promissory Note and Deed of Trust closer in time to the closing of the Bank’s loan, its failure to do so was hardly surprising. Since the obligation was owed by one entity owned and controlled by Choudhri to another, Choudhri had no necessity to document the loan until it matured and had to be enforced. That explains why Galleria 2425 Owner, LLC’s recordkeeping was perhaps less formal than it should have been. But any bookkeeping errors that occurred in creating the Promissory Note and the Deed of Trust cannot negate the very real loan transaction they evince and represent. And any negligence that occurred in documenting that loan certainly cannot provide grounds for disallowing 2425 WL, LLC’s claim based on that loan. Neither delay nor negligence constitutes fraud.

Nor, for that matter, does it matter that the Promissory Note and Deed of Trust were



executed by Choudhri as managing member of Galleria 2425 Owner, LLC, rather than Azeemeh Zaheer, even though she was managing member of Naissance Capital Real Estate, LLC the entity that controlled Galleria 2425 Owner, LLC in 2018 when the loan arose. (Order at 2) All admit that after 2021, Choudhri became the managing member of the property owner of the property. (*See* Dkt No. 729 at 33) He therefore had complete authority to execute documents on its behalf at the time the Note and Deed of Trust were recorded—and to correct the previous failure to execute these documents back in 2018. Nor does it matter that the documents were not executed by Saheer, when she was in charge of Naissance Capital. (Dkt No. 729 at 33) Choudhri owned Naissance Capital. (Ex. 2 ¶ 6) Zaheer was his agent. (*Id.*) That gave Choudhri the complete authority to direct Zaheer to create these documents and to dismiss Zaheer if she refused.

In any event, if there was any error in the execution of the Promissory Note or the Deed of Trust, Choudhri had the power to ratify the validity of those documents in spite of those errors. And he did so. (Ex. 2 ¶ 6) It is undisputed that Choudhri owned and controlled Galleria 2425 Owner, LLC—and thus controlled the entity on behalf of which those documents were executed as principal. Under the doctrine of ratification, a principal can become bound by a contract that was made in its name but without its authority. RESTATEMENT (THIRD) OF AGENCY § 4.01(1) (Am. L. Inst. 2007). One form of ratification occurs when the principal manifests an intention to be legally bound by a previously unauthorized action. *See id.* So Choudhri's act of signing the Promissory Note ratified the loan. Moreover, ratification does not always require formal action—it can be inferred from simple silence. Elliot Axelrod, *The Doctrine of Implied Ratification—Application and*

*Limitations*, 86 Okla L. Rev. 849, 849 (1983). And Choudhri certainly ratified the validity of the Promissory Note and the Deed of Trust when he allowed the loan reflected in those documents to be foreclosed. Accordingly those documents are as enforceable as if they had been executed in 2018 by Zaheer.

There is likewise no reason to believe that either the Promissory Note or the Deed of Trust are lacking in “consideration.” (Order at 2) The consideration on both ends of those documents is clear: Executing the Note allowed Galleria 2425 Owner, LLC to purchase the property despite being short of the cash needed for the transaction, and it provided terms for repayment of the implied obligation it had undertaken as the result of that shortfall—allowing the maturity of that debt to be delayed until 2021 after it had not been repaid for three years. (*See* Dkt. No. 635-3) Accordingly, there is absolutely no evidence to question the validity or enforceability of the Promissory Note, the Deed of Trust, or the loan they evince.

**2. The Court should not have credited the testimony of the Trustee’s witnesses, or doubted the veracity of Ali Choudhri, 2425 WL, LLC’s principal.**

Indeed, the only testimony that the Trustee offered to question the existence of the loan or the validity of 2425 WL, LLC’s claims is incredible, incompetent, and in fatal conflict with the undisputed documentary evidence in this case.

At the hearing on the Trustee’s motion to disallow 2425 WL, LLC’s claim, the Trustee offered the testimony of two witnesses in support of that motion: Azeemeh Zaheer and Chris Wyatt. But while the Court found both of these witnesses “to be incredibly competent” and entirely adopted their version of events, the truth is that they are *anything*

*but* competent. (Op. 2) Wyatt is a well-known hired gun who engages in corporate espionage for a living and who regularly ends up on the wrong end of the law. Indeed, Wyatt has admitted to going to work at companies and then stealing computers from his employers in order to turn over the secrets they contain to competitors. (Ex. 6 [Petition]; Ex. 7 [Agreed Judgment]). Wyatt has been convicted at least four times of committing felony burglary and criminal trespass. (Ex. 11) [Wyatt Verified Background Search]). Zaheer is a disgruntled former employee of Choudhri's company—and Choudhri's ex-girlfriend. (Ex. 2 ¶ 7)

Both Zaheer and Wyatt had a motivation to lie in this case is absolutely clear: They are acting in concert with Choudhri's disgruntled business partner, Osama Abdullatif, who has repeatedly tried to seize Choudhri's business interests by brute force and fraud. Witnesses have seen Abdullatif communicating frequently with Wyatt. (Ex. 8 [Declaration of Quanell X Farrakhan No. 1]) There is evidence that Wyatt has stolen computer hard drives from Choudhri's companies to give to Abdullatif. (Ex. 8 & 9 at 1 [Quanell X Farrakhan Aff. No. 2]) Indeed, Abdullatif has even arranged for Wyatt to accuse Choudhri in a murder-for-hire plot to kill Abdullatif himself, which authorities dismissed as "a hoax." (Ex. 9) And Omar Khawaja, an attorney and close business associate of Abdullatif, admits to representing Abdullatif, Wyatt, and Zaheer in furtherance of Abdullatif's efforts to seize all of Choudhri's business interests through litigation—under their theory: "If [Ali] own[s] it, we own it." (Ex. 13 [Khawaja Depo.] at 23: 30: 17-21;163:8-165:2; 194:3-6) Indeed, it was Khawaja that also represented Choudhri's ex-wife in her frivolous effort to file *lis pendens* claims on all of Choudhri's properties as part of Abdullatif's vendetta against

Choudhri. (Ex. 14 [Engagement Agreement]) Accordingly, Wyatt and Zaheer are not credible witnesses—they are instruments in a personal vendetta against Choudhri. .

Yet Choudhri and 2425 WL, LLP were not afforded a proper opportunity to challenge these witnesses' credibility at the June 6, 2024 Hearing on the Trustee's motion to disallow Claim 7, because they received barely any notice that these witnesses would be testifying at the September 6 hearing. Neither person was listed among the Trustee's witnesses until they appeared in an exhibit and witness list that the Trustee turned over a mere two days before the hearing. (*See* Dkt No. 635; *see also* Dkt. No. 729 at 21, 60) Accordingly, neither Choudhri nor 2425 WL, LLP had an opportunity to raise the numerous issues with the Trustee's reliance on their testimony. And the Court's decision to allow their testimony despite that late notice separately constitutes reversible error.

Moreover, the testimony that both witnesses gave at the hearing was completely incompetent and in conflict with the undisputed facts. Wyatt admitted that he had “no personal knowledge of what happened at the time of the transaction” in 2018, when 2425 WL, LLP's supposedly fictitious loan arose because Wyatt did not start working for Choudhri's companies until October of 2020. (Dkt. No. 729 at 69) And as a result, Wyatt admitted that he was “not sure” what the \$14.7 million seller-to-buyer “credit” listed on the Settlement Statements issued for the 2018 transaction even referred to. (*Id.* at 71)

Zaheer's testimony was no better. She insisted—bizarrely—that this \$14.7 million credit was actually an amount that Choudhri *received* from the transaction as seller and that it resulted from the amount that was left over *after* “the 51.6 million” provided by the Bank “plus the 16.1 million” in mezzanine financing. (Dkt. No. 729 at 47) But the \$14.7 million

credit represented a *shortfall*, not a *surplus*. The \$51.6 million provided by the Bank and the \$16.1 million mezzanine financing only amounted to \$67.7 million—well short of the \$81 million purchase price. That is why the \$14.7 million credit was necessary. That is also why the credit flows from the “SELLER” to “BUYER” rather than representing any payment by *buyer* to *seller*. And that is why the credit was necessary to fund the remainder of the purchase price. There is no source of funding to make up for this shortfall *other* than the credit provided by the seller. And there is no way the amount of the credit—which represents the balance that the buyer *was unable* to pay—could result in a cash *payment* to the seller.

Zaheer’s own confusion about the nature of the \$14.7 million credit seems to have confused the Court as well. The Court called it “fanciful” for 2425 WL, LLC to contend that the seller “who received over \$13 million in cash” out of a transaction “after payment of all outstanding debts and credits” would still have an additional claim against the debtor “for \$14 million dollars plus accumulated interest.” (Order at 2) But that contention is anything but fanciful. First of all, there is nothing to suggest the seller received the \$13 million “after payment of all outstanding debts and credits.” At the very least, the Bank’s senior loan and the mezzanine financing were both “outstanding” at that time. And the \$14.7 million credit was too. Second, the reason that 2425 WL, LLC received both a lump sum of cash and the right to collect *more* cash is obvious: The lump sum covered a portion of the contract balance, and the “credit” gave 2425 WL, LLC to recover the balance that remained *after* that lump sum was paid.

In sum, even as Wyatt and Zaheer insist 2425 WL, LLC provided no loan to the

debtor in this case, they cannot adequately explain what this \$14.7 million credit was meant to represent—because they cannot overcome the fact that it represents a loan. And the Court could not overcome that fact either. Accordingly, neither the Trustee nor the Court have offered any reason to disregard the undisputed evidence demonstrating the Bank’s recognition of the loan or the documents evincing its existence. And that means the evidence conclusively demonstrates the validity of 2425 WL, LLC’s claim in this case.

Furthermore, even as the Court has uncritically given dispositive weight to the incompetent, and biased testimony of known frauds and criminals, it has levied serious accusations at Mr. Choudhri about his “truth and veracity,” despite the fact that Mr. Choudhri, has given the Court no reason to do so. The Court criticized Choudhri for failing to appear at the hearing—deeming his assertion “that he was ill” to be entirely “fals[e].” (Order at 3)

But Choudhri has absolutely no fear of testifying under oath or answering questions from the Court. He welcomes it. He did not appear because he was seriously ill—as he has been throughout the confirmation of the plan in this case and the hearing on the motion to disallow 2425 WL, LLC’s claim. On June 3 of this year, Choudhri was diagnosed with a “stroke.” (Ex. 15 at 1 [Methodist Medical Records]) And the radiologist who made that diagnosis is entirely independent of Choudhri. Indeed, Choudhri has never even met the doctor who diagnosed him, because he made that diagnosis solely by reviewing a CT scan

of Choudhri's brain. (*Id.*)<sup>2</sup>

Shortly after this diagnosis, Choudhri appeared telephonically at a hearing before Judge Isgur, because that hearing could result in the foreclosure upon one of his most valuable properties. (Ex. 2 ¶10) And the stress of that telephonic appearance was so severe that Choudhri the next day, after a video deposition, he collapsed. (*Id.*) The day after that hearing, Choudhri's doctor ordered that he "shall not participate in any stressful interactions and not return to work" for at least "a month"—until July 7. (Ex. 16 [physician records]).

Yet as the Court explained during the Confirmation Hearing in this case, the Court decided to disregard the opinions of disinterested medical experts because Judge Isgur told the Court that Choudhri didn't at that point in time appear to have any sort of problems at all the June 6 hearing in his courtroom, despite the fact that Judge Isgur never personally saw Choudhri during his telephonic appearance, and Choudhri was definitely having problems. (Ex. 12 at 14 [Credit Bidding Transcript]) Mr. Choudhri respectfully submits that the Court should not second-guess the opinions of medical experts based on reports from other bankruptcy judges who did not personally observe his condition.

The Court also appears to have based its opinions about Choudhri's "truth and veracity" on other episodes from the Court's "long history" with Choudhri. (Order at 2-3) And that "long history" is likely to include observations that the Court made about

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<sup>2</sup> This poses another example of an area the Court need not go to in determining whether a claim is valid, but is an area it *must* go to if it is to conclude fraud was committed.

Choudhri's litigation in other cases. But these other cases provide no grounds to doubt Choudhri's truthfulness. The vast majority of his legal cases have been necessary to combat the scorched-earth campaign of fraud that Osama Abdullatif has waged against Choudhri's businesses and his character. The fraudulent blanket lis pendens' filed by Mr Abdullatif and related parties on nearly 100% of Choudhri's properties, preventing him from refinancing or selling said properties. And the remainder have been garden-variety disputes of the sort that everyone engaged in the business of real estate will eventually experience. None of this evidence provides any reason to doubt Choudhri's veracity, much less suggests that he has committed fraud. Accordingly, it is not enough for the Court to merely reinstate 2425 WL, LLC's claim in this case, it should withdraw any suggestion that Choudhri should be prosecuted for fraud.

Candidly, the reason Choudhri did not appear to defend the claim it was "just money," less important than his health. But if he at all suspected that his reputation and entire life's work were at issue—not to mention a criminal referral—he obviously would have appeared.

**B. The Court also erred as a matter of law by rendering a moot decision to invalidate a claim that was already invalidated under the Plan.**

The Court also erred as a matter of law by misinterpreting the force and effect of its own previous orders. The Plan that the Court confirmed in this case has already disallowed the claims that 2425 WL, LLC has asserted against the Debtor, including Claim 7. (Ex. \_\_ at \_\_ [Plan]) That means there was no pending claim for the Court to disallow. The Order Disallowing Proof of Claim is therefore entirely moot—a legal nullity.



The only real purpose behind the Trustee's attempt to disallow 2425 WL, LLC's already-disallowed claim is to moot 2425 WL, LLC's pending appeal of the order confirming the plan. And indeed, since the Court entered the Order Disallowing Proof of Claim, the Trustee has already raised that order in the district court as a basis to dismiss 2425's appeal and deny it any right to challenge the Plan's confirmation. (*See* Case No. 4:24-cv-01746 [Dkt. 22]) And the Trustee's purpose in that effort is as pernicious as it is transparent: The Plan releases 2425 WL, LLC's claims against the Trustee, the Bank, and others. And as a recipient of those releases, the Trustee does not wish to see their validity threatened. So it is trying to deny 2425 WL, LLC standing to pursue an appeal to challenge those releases.

That effort will be fruitless. Even if Claim 7 is disallowed, 2425 WL, LLC will retain standing to challenge the Plan's confirmation, because 2425 WL, LLC has challenged the provisions of the Plan releasing claims that 2425 WL, LLC possesses against other non-debtors. The fact that the Plan thereby denies 2425 WL, LLC any right of monetary recovery on those claims constitutes a "pecuniary" injury that is sufficient to convey standing. (*See* Case No. 4:24-cv-01746 [Dkt. 22] at 6) Yet even though this effort will not have its intended effect, the Trustee's pursuit of it is unjust, and it should not be approved by this Court.

### **CONCLUSION**

For these reasons, Defendants' Motion for Reconsideration and for Relief from Judgment should be granted, the Order Disallowing Proof of Claim and Referral to United States Attorney should be vacated, the referral to the United States Attorney should be

withdrawn, and Claim 7 belonging to 2425 WL, LLC should be allowed.

Respectfully submitted,

*/s/ J. Carl Cecere*

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#### **CERTIFICATE OF SERVICE**

The undersigned certifies that on this 23rd day of September, 2024, a true and correct copy of the foregoing was served in accordance with the CM/ECF e-filing system.

*/s/ J. Carl Cecere*

**J. Carl Cecere**

## EXHIBIT 1

**ENTERED**

September 09, 2024

Nathan Ochsner, Clerk

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION****IN RE:****GALLERIA 2425 OWNER, LLC,****Debtor.**§  
§  
§  
§  
§  
§**CASE NO: 23-34815****CHAPTER 11****ORDER DISALLOWING PROOF OF CLAIM AND  
REFERRAL TO UNITED STATES ATTORNEY**

Filing a false Proof of Claim is a federal crime.<sup>1</sup> For the reasons so stated the Court holds that Proof of Claim 7, and the Amended Claim 7-2 signed by Ali Choudhri as manager of 2425 WL, LLC is a false Proof of Claim, the claim is disallowed in its entirety and the Court refers this matter to the United States Attorney for investigation.

On March 21, 2024, Proof of Claim Number 7 was filed by 2425 WL, LLC in the amount of \$22,968,231.58. On June 3, 2024, the Chapter 11 Trustee, Christopher R. Murray filed his Objection to Claim No. 7 (ECF No. 402). On June 28, 2024, the claim was amended (Claim 7-2) for the same amount of \$22,968,231.58. Trial was held on September 6, 2024, evidence was introduced, and witnesses testified.

Proof of Claim 7-2 attaches as documentary evidence a Promissory Note (ECF No. 692-2) dated May 23, 2018, and a Deed of Trust (ECF No. 692-3) dated May 23, 2018, that was recorded on May 11, 2021. The Deed of Trust contains an undated notary acknowledgment, the attachments to the Proof of Claim also include a Settlement Statement (ECF No. 692-4) with a settlement date of May 23, 2018. Claim 7-2, the Promissory Note and Deed of Trust are all signed by Ali Choudhri. The Promissory Note and Deed of Trust are fraudulent. They were not created on May 23, 2018, and were created at a date substantially thereafter but prior to the recording date on the Deed of Trust of May 11, 2021.

The false secured Proof of Claim 7-2 is based on the Settlement Statement attached thereto that arises out of a real estate transaction that is shown by exhibits at ECF No. 692-8 to ECF No. 692-12. On May 23, 2018, Galleria 2425 Owner, LLC as borrower and National Bank of Kuwait, S. A. K. P., New York Branch ("NBK") as lender loaned \$51,675,000.00 to the borrower for the purchase of real estate. The Promissory Note (ECF 692-9) is secured by a Deed of Trust (ECF 692-10) against the subject real estate. In addition to the NBK promissory note there was an additional Mezzanine Loan Agreement between Galleria 2425 JV, LLC as borrower and Naissance Galleria, LLC as lender in the amount of \$16,100,000.00 (ECF 692-12). These various transactions are incorporated into the Settlement Statement, attached to the false Proof of Claim.

<sup>1</sup> 28 U.S.C. § 152 "A person who – ... (4) knowingly and fraudulently presents any false claim for proof against the estate of a debtor or used any such claim in any case under title 11, in a personal capacity or as or through an agent, proxy or attorney; ... shall be fined under this title, imprisoned not more than 5 years or both."

As indicated by the Settlement Statement the borrower was Galleria 2425 Owner, LLC (the debtor), the Seller was 2425 WL, LLC (the claimant) and the lender was NBK. The Contract Sales Price (Line 401) is \$79,500,000.00 and after payment of all outstanding debits and credits the Seller and claimant received cash of \$13,720,254.15 (Line 603). The false Proof of Claim 7-2 is based on line 518 of the Settlement Statement which indicates a “Seller Credit to Buyer” of \$14,730,332.38, which when netted against debits to the Buyer in the settlement statement leads to the cash payment to the Seller and claimant of \$13,720,254.15. Somehow line 603 of the Settlement Statement leads the claimant to make the fanciful, and wholly false claim that the claimant who received over \$13 million in cash has an additional claim against the debtor for over \$14 million dollars plus accumulated interest as if it lent the debtor this sum, when it did not.

The actual May 23, 2018, transactions were authorized and signed by Azeemeh Zaheer (“Zaheer”) in her various capacities including the representative(s) of Galleria 2425 Owner, LLC, Naissance Galleria, LLC, Naissance Capital Real Estate, Ltd, and Galleria 2425 JV, LLC. On this date she was the only person who could have authorized these transactions, and no other persons had authority to bind these entities. Zaheer appeared under subpoena and testified that the Promissory Note and Deed of Trust signed by Choudhri that are attached to the Proof of Claim 7-2 did not exist as of May 23, 2018, their purported date, and that even if they had existed, she would have been the only person authorized to enter such transactions. Choudhri had at that time no authority to sign these documents even though they purported to be signed on that date.

A plain reading of the Settlement Statement indicates that the Seller and claimant received over \$13 million dollars from the sales transaction of May 23, 2018, and did not have a claim against the debtor for over \$14 million plus accumulated interest. There could have been no consideration paid by the claimant for the Promissory Note or the Deed of Trust as alleged in Claim 7-2. The claimant received funds and did not and could not have paid any monies in the subject transaction. The Court holds that on May 23, 2018, the Promissory Note and Deed of Trust attached to the false Proof of Claim 7-2 did not exist, that they were created without the payment of any consideration by the claimant and that they were fraudulently created after the fact by Ali Choudhri, who controls the claimant.

If the testimony of Zaheer was not damning enough to Choudhri, Christopher Wyatt (“Wyatt”) also testified under subpoena at the hearing. Wyatt was the Chief Operating Officer of Jetall Companies, Inc from July of 2019 to October of 2020. Jetall is also controlled by Ali Choudhri. Wyatt testified that Choudhri requested that he draft a Promissory Note and Deed of Trust in order to secure leverage against NBK due to a bankruptcy proceeding that severely impacted the financial standing of the debtor.<sup>2</sup> Wyatt was concerned about the request, conducted an independent investigation and determined that the claimant did not have a valid claim as contained in the false Promissory Note and false Deed of Trust and that any documents he drafted would be fraudulent. The Court finds both Zaheer and Wyatt to be incredibly competent witnesses.

This Court now has a long history with Ali Choudhri. This Court has held that his truth and veracity are questionable in prior proceedings in this case. The Court after hearing finds again that

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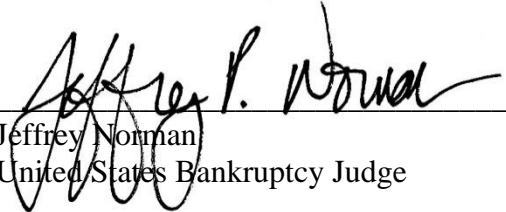
<sup>2</sup> Case No. 20-32564, Stage Stores, Inc.

his truth and veracity are questionable, unfortunately entirely questionable. He did not appear for this hearing, claiming again, falsely, that he was ill.<sup>3</sup> The Court understands his failure to appear, as the only witnesses before the Court testified that Choudhri was of questionable conduct and created false documents. There are questions that Choudhri does not want to answer and if he had appeared, the Court would have forced him to answer them. The Court believes that Choudhri is a forger and a liar, but he at least is smart enough to avoid a Court hearing where he would be forced to testify and face what is now very evident to this Court.

The Court sustains the Chapter 11 Trustee's Objection at ECF No. 402, and orders that Proof of Claim 7-2 is disallowed in its entirety. This matter is referred to the United States Attorney for investigation.

**SO ORDERED.**

SIGNED 09/09/2024

  
\_\_\_\_\_  
Jeffrey Norman  
United States Bankruptcy Judge

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<sup>3</sup> Choudhri has made this claim in various matter set before this Court.

## EXHIBIT 3

**NO. 2015-36895**

<b>IN THE MATTER OF THE</b>	<b>§</b>	<b>IN THE DISTRICT COURT</b>
<b>THE MARRIAGE OF</b>	<b>§</b>	
	<b>§</b>	
	<b>§</b>	<b>312TH JUDICIAL DISTRICT</b>
<b>HIRA AZHAR</b>	<b>§</b>	
<b>AND</b>	<b>§</b>	
<b>ALI CHOUHDRI</b>	<b>§</b>	<b>HARRIS COUNTY, TEXAS</b>

**JOINT MOTION TO COMPEL ENFORCEMENT OF PRIOR ORDERS**

Respondent, Ali Choudhri, ("Choudhri"), Dalio Holdings I, LLC, ("Dalio") and 1001 WL, LLC; 2425 WL, LLC; 2401 FV, LLC; and 50 BH, LLC ("New York Defendants") file this Joint Motion to Compel Enforcement of Prior Orders and respectfully requests the Court expunge the Notices of Lis Pendens filed by Petitioner, Hira Azhar ("Azhar"). In support of this Motion, Movants argue that Azhar violated this Court's orders to not file any further lis pendens. Additionally, Movants argue that the filing of the Notices constitutes a violation of the parties' Rule 11 Agreement. Azhar should be ordered to comply with the orders of this Court.

1. Petitioner has a history and practice of filing and refileing Notices of Lis Pendens affecting real property and business interests.

Petitioner Hira Azhar filed a Notice of Lis Pendens affecting the following real property:

- 3901 Woodchase, Houston, Texas 77042;
- 50 Briar Hollow, Houston, Texas 77027;
- 2425 West Loop South, Houston, Texas 77027;
- 35 E. Rivercrest, Houston, Texas 77042;
- 1001 West Loop South, Houston, Texas 77027;
- 2401 Fountainview, Houston, Texas 77057;
- 7907 Raven Creek Ln., Cypress, Texas 77433;
- 6531 Rodrigo St., Houston, Texas 77007;
- 6516 Coppage St., Houston, Texas 77007;
- 5803 Blossom St., Houston, Texas 77007;
- 4401 Schurmier Rd., Houston, Texas 77048;



- 1123 Bartlett, Houston, Texas 77006;
- 8050-8098 Westheimer Road, Houston, Texas 77063;
- 105 Detering St. #A, Houston, Texas 77007;
- 207 Malone St., Houston, Texas 77007;
- 3550 Charleston St., Houston, Texas 77021;
- 402 Terrace Drive, Houston, Texas 77007; and
- Notice of Lis Pendens, RP-2019-92043.

See attached Exhibits 1-18.

2. On June 14, 2017, Choudhri filed a Motion to Expunge Lis Pendens concerning the affected real estate set out above. On June 26, 2017, New York Defendants filed their Motion to Expunge Lis Pendens concerning the real estate set out above. On July 20, 2017, after a hearing on the Motions to Expunge Lis Pendens this Court entered a pair of orders and enjoined Azhar from filing any additional Lis Pendens notices. The Court made the following finding and rendition concerning Azhar's attempt to encumber the real property at issue:

The Court FINDS that Petitioner has failed to meet the elements of the Texas Property Code for filing and maintaining a lis pendens. The notice of lis pendens on the real property . . . is expunged....

Furthermore, the Petitioner is enjoined from filing any further Notices of Lis Pendens . . . without first seeking leave of Court. (Emphasis added).

A true and correct copy of the *Order on Motion to Expunge Lis Pendens* entered on July 20, 2017 is attached hereto and fully incorporated herein, as Exhibit "19".

3. In a second order entered against Azhar on the same day, the Court ordered the following:

[a]ll notices of lis pendens, including amended notices, filed by Petitioner Hira Azhar on the properties ... (the "Properties") are EXPUNGED....

**Petitioner is ORDERED not to file any further notices of lis pendens on the Properties.**

A true and correct copy of the Order entered on July 20, 2017, is attached hereto and fully incorporated herein, as Exhibit "20".

4. Further, on July 19, 2017 Counsel for Petitioner, Mr. Alan B. Daughtry stipulated on the record, as follows:

18 MR. HUNT: Judge, just one question so  
19 that we don't have to come back and do another  
20 expungement on lis pendens. Does that order include  
21 tying them up so they can't just refile the same ones  
22 again?  
23 MR. DAUGHTRY: We will not be filing any  
24 of the same lis pendens that we have already filed that  
25 the Court expunged.

Barbara K. Nagji - Official Court Reporter  
312th District Court

1 MR. HUNT: Same -- so you just write new  
2 ones up and file those?  
3 MR. DAUGHTRY: No. With respect to any of  
4 the properties that we have filed lis pendens on that  
5 have been expunged by this Court we will not file any  
6 new lis pendens.  
7 MR. HUNT: Okay.  
8 THE COURT: You accept the stipulation, I  
9 assume?

A true and correct copy of the relevant portions of the transcript from the July 19, 2017 hearing on the Motion to Expunge Lis Pendens is attached hereto and fully incorporated herein, as Exhibit "21". Mr. Daughtry's stipulation on the record, in open court constitutes an enforceable Rule 11 Agreement. Tex.R.Civ.P.11; *See Padilla v. LaFrance*, 907 S.W.2d 454, 460 (Tex.1995).

5. Azhar, with total disregard for this Court's prior orders and with full knowledge of the existence of such orders filed new Notices of Lis Pendens against the same properties listed hereinabove.

6. Azhar knowingly violated the prior orders of this Court when she filed the notices. Respondent, Dalio and New York Defendants further argue that Azhar will continue to violate the orders of this Court should the Court fail to enter additional orders that each and every Notice of Lis Pendens filed in connection with this suit be expunged.

***Requested Relief***

7. Respondent asks the Court, after notice and hearing, to grant this motion and enter an order that Azhar's newly filed Notices of Lis Pendens be expunged. In addition, Respondent requests this court enjoin Petitioner from filing any lis pendens.

**Prayer**

8. Respondent prays the Court grant such additional relief for which he may be entitled in equity or law.

Respectfully submitted,

COLEMAN & ASSOCIATES

By: /s/ Cheryl F. Coleman

Cheryl F. Coleman

Texas Bar No. 24006654

1108 Melwood Street

Houston, Texas 77009

coleman@colemanandassociates.net

Tel: 713.290.1191

Fax: 713.290.1088

**COUNSEL FOR ALI CHOUDHRI**

PAGEL, DAVIS & HILL, P.C.

/s/ Martyn B. Hill

Martyn B. Hill  
Texas Bar No. 09647460

**Attorney-in-Charge**

Michael Harris  
Texas Bar No. 24046030

Philip D. Racusin  
Texas Bar No. 24054267  
1415 Louisiana St., 22nd Floor  
Houston, Texas 77002

713-950-0160 (Telephone)

713-951-0662 (Fax)

eservice@pdhlaw.com

**ATTORNEYS FOR DEFENDANT  
DALIO HOLDINGS I, LLC**

PENNELL LAW FIRM, PLLC

/s/ Kevin Pennell

Kevin Pennell  
Texas Bar No. 24046607

[kevin@pennellfirm.com](mailto:kevin@pennellfirm.com)  
19 Briar Hollow Lane, Suite 110  
Houston, Texas 77027

(713) 965-7568

(713) 583-9455 (fax)

**Attorney for 1001 WL, LLC;  
2425 WL, LLC; 2401 FV, LLC; and  
50 BH, LLC**

**CERTIFICATE OF SERVICE**

I hereby certify that on March 28, 2019, a true, correct and complete copy of the above and foregoing instrument, was served in accordance with the Texas Rules of Civil Procedure:

**Via E-Service**

Bobby K. Newman  
LILLY, NEWMAN & VAN NESS L.L.P.  
3355 W. Alabama, Suite 444  
Houston, Texas 77098  
bknservice@lnvlaw.com  
***Counsel for Petitioner***

**Via E-Service**

Alan B. Daughtry  
3355 W. Alabama, Suite 444  
Houston, Texas 77098  
[alan@alandaughtrylaw.com](mailto:alan@alandaughtrylaw.com)  
***Counsel for Petitioner***

/s/ Cheryl F. Coleman  
Cheryl F. Coleman

Unofficial Copy Office of Marilyn Burgess District Clerk

## EXHIBIT 4

NGA

P-2

~~FILED~~

4

CAUSE NO. 2015-36895

IN THE MATTER OF  
THE MARRIAGE OF

HIRA AZHAR  
AND  
ALI CHOUDHRI

**FILED**  
Marilyn Burgess  
District Clerk  
NOV 22 2019  
Time: 2:55  
Harris County, Texas  
By Dawn Hutchings  
Deputy

IN THE DISTRICT COURT OF

312TH JUDICIAL DISTRICT

HARRIS COUNTY, TEXAS

**FINAL JUDGMENT**

By order dated August 9, 2019 (the "Order"), the Court dismissed all Texas Family Code Chapter 6 claims asserted in this case. The Order recited the Court's earlier decision to dismiss at a hearing conducted on June 26, 2019. At that same hearing, the Court (i) struck Petitioner's Fourth Amended Petition as being filed past the deadline for pleadings, (ii) granted Petitioner leave to file a Fifth Amended Petition and (iii) instructed the parties to brief issues relating to Petitioner's newly asserted Texas Family Code Chapter 9 or other property claims. The Court also entered an order dated April 8, 2019 titled Order on Joint Motion to Compel Enforcement ordering that all notices of Lis Pendens filed by Hira Azhar are hereby released and null and void.

Petitioner's Fifth Amended Petition was thereafter filed, asserting new claims under Texas Family Code Chapter 9 and Chapter 23 of the Texas Property Code. The parties submitted briefing on the newly asserted claims. At a hearing on August 9, 2019, the Court directed the parties appear for hearing / bench trial on the issues raised in the briefing.

The parties appeared in person and through counsel on August 19, 2019 and announced ready for trial. Having heard and considered the briefing, the arguments of counsel and the evidence, the Court has determined to dismiss with prejudice all of Petitioner's remaining claims. It is therefore

ORDERED, ADJUDGED AND DECREED that Petitioner's newly asserted Fifth Amended Petition claims are dismissed with prejudice. It is further

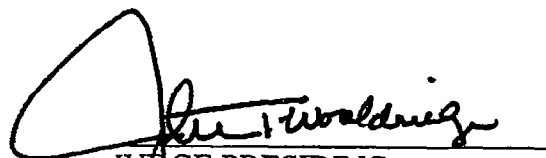
ORDERED, ADJUDGED AND DECREED that the August 9, 2019 Order is made final by this final judgment. It is further

ORDERED, ADJUDGED and DECREED that Petitioner Hira Azhar take nothing against all Respondent Ali Choudhri and all other Defendants. It is further

ORDERED, ADJUDGED AND DECREED that all costs are taxed against Petitioner Hira Azhar. It is further

ORDERED, ADJUDGED AND DECREED that any claims of Petitioner are dismissed with prejudice, that all other prior orders of the Court not expressly noted above are hereby withdrawn, dissolved, void ab initio and terminated and that this is a final judgment, and is appealable.

SIGNED on the \_\_\_\_ day of **NOV 22 2019**, 2019.

  
JUDGE PRESIDING  
John T. Wooldridge  
Judge Presiding



NCA

CAUSE NO. 2015-36895

IN THE MATTER OF  
THE MARRIAGE OF

HIRA AZHAR  
AND  
ALI CHOUDHRI

§  
§  
§  
§  
§  
§

IN THE DISTRICT COURT

312<sup>TH</sup> JUDICIAL DISTRICT

HARRIS COUNTY, TEXAS

P-2  
4A

ORDER  
JUDGMENT

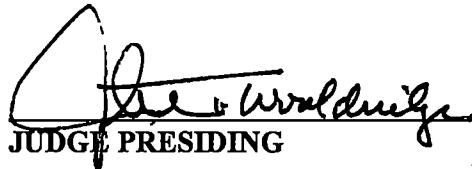
2

On this day came on for consideration Ali Choudhri's Motion to Dismiss filed on or about April 4, 2019 incorporating 1) Choudhri's Rule 308b Notice dated June 27, 2018; 2) Choudhri's Plea to the Jurisdiction dated June 27, 2018; and 3) Motion to Dismiss By Choudhri dated November 8, 2018 including Azhar's Response to Motion to Dismiss dated November 29, 2018, and all supplements thereto, and the Court after considering all responses, conducting hearings and receiving evidence and arguments of the parties is of the opinion that the motion should be <sup>in part</sup> GRANTED, the Court noting that the Supreme Court of Pakistan (the highest court in Pakistan), by Order dated November 3, 2018, after a challenge by Hira Azhar upheld a divorce certificate between the parties issued May 22, 2013 based upon a divorce deed dated January 30, 2013, it is therefore

7  
~~AMAR~~

ORDERED, that ALI CHOUDHRI'S Motion to Dismiss is granted <sup>only as to the extent</sup> ~~that the Court recognizes that the parties were divorced in Pakistan as of May~~ 22, 2013. IT IS FURTHER ORDERED, that, consistent with Ashfaq v. Ashfaq, 467 S.W.3d 539, 544 (Tex. App. — Houston [1st Dist.] 2015, no pet.) (trial court properly dismissed for lack of jurisdiction where parties had divorced before filing for divorce in Texas), Hira Azhar's Petition for Divorce is dismissed for want of jurisdiction. Thus, any and all temporary restraining orders and/or temporary injunctions under the above styled cause number are void *ab initio*.

SIGNED on the \_\_\_\_\_ day of AUG 09 2019, 2019.

  
JUDGE PRESIDING

John T. Wooldridge  
Judge Presiding

**PREPARED BY:**

**LAW OFFICES OF MARSHALL DAVIS BROWN, JR.**

Marshall Davis Brown, Jr.  
**MARSHALL DAVIS BROWN, JR.**

State Bar No. 03153550

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[service@mdblegal.com](mailto:service@mdblegal.com) (e-Service address)

**ATTORNEY FOR RESPONDENT,**

**ALI CHOUDHRI**

## EXHIBIT 5

## A. Settlement Statement

### B. Type of Loan

1. <input type="checkbox"/> FHA	2. <input type="checkbox"/> FmHA	3. <input type="checkbox"/> Conv Unins	6. File Number 12800990	7. Loan Number	8. Mortgage Ins Case Number
4. <input type="checkbox"/> VA	5. <input type="checkbox"/> Conv Ins.	6. <input type="checkbox"/> Seller Finance			
7. <input type="checkbox"/> Cash Sale					

C. Note: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.

D. Name & Address of Borrower Galleria 2425 Owner, LLC, a Delaware limited liability company 60 W 2nd St Freeport, NY 11520	E. Name & Address of Seller 2425 WL, LLC, a New York Limited Liability Company 2500 West Loop South, Suite 255 Houston, TX 77027	F. Name & Address of Lender National Bank of Kuwait, S.A.K.P., New York Branch, a banking corporation organized under the laws of Kuwait, acting through its New York branch 299 Park Avenue New York, NY 10171
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### G. Property Location

TR 31D ABST 836 W WHITE  
2425 W Loop S  
Houston, TX 77027

### H. Settlement Agent Name

TransAct Title - Galleria  
6117 Richmond Ave, Suite 250  
Houston, TX 77057 Tax ID: 45-3483105  
Underwritten By: WFG National Title Insurance Company

Place of Settlement  
TransAct Title - Galleria  
6117 Richmond Ave, Suite 250  
Houston, TX 77057

I. Settlement Date  
5/23/2018  
Fund:

### J. Summary of Borrower's Transaction

#### 100. Gross Amount Due from Borrower

101. Contract Sales Price	\$79,500,000.00
102. Personal Property	
103. Settlement Charges to borrower	\$3,369,209.67
104.	
105.	

#### Adjustments for items paid by seller in advance

106. City property taxes	
107. County property taxes	
108. Assessment Taxes	
109. School property taxes	
110. MUD taxes	
111. Other taxes	
112.	
113.	
114.	
115.	
116.	

120. Gross Amount Due From Borrower \$82,869,209.67

#### 200. Amounts Paid By Or In Behalf Of Borrower

201. Deposit or earnest money	
202. Principal amount of new loan(s)	\$51,675,000.00
203. Existing loan(s) taken subject to	
204. Mezzanine financing	\$16,100,000.00
205.	
206.	
207. Earnest Money pd directly	\$100.00
208.	
209.	

#### Adjustments for items unpaid by seller

210. City property taxes	
211. County property taxes 01/01/18 05/23/18	\$363,777.29
212. Assessment Taxes	
213. School property taxes	
214. MUD taxes	
215. Other taxes	
216.	
217.	
218.	
219.	

220. Total Paid By/For Borrower \$68,138,877.29

#### 300. Cash At Settlement From/To Borrower

301. Gross Amount due from borrower (line 120)	\$82,869,209.67
302. Less amounts paid by/for borrower (line 220)	\$68,138,877.29
303. Cash From Borrower	\$14,730,332.38

### K. Summary of Seller's Transaction

#### 400. Gross Amount Due to Seller

401. Contract Sales Price	
402. Personal Property	
403.	
404.	
405.	

#### Adjustments for items paid by seller in advance

406. City property taxes	
407. County property taxes	
408. Assessment Taxes	
409. School property taxes	
410. MUD taxes	
411. Other taxes	
412.	
413.	
414.	
415.	
416.	

420. Gross Amount Due to Seller

#### 500. Reductions in Amount Due to Seller

501. Excess Deposit	
502. Settlement Charges to Seller (line 1400)	
503. Existing Loan(s) Taken Subject to	
504. Payoff of first mortgage loan	
505. Payoff of second mortgage loan	
506.	
507. Earnest Money pd directly	
508.	
509.	

#### Adjustments for items unpaid by seller

510. City property taxes	
511. County property taxes 01/01/18 05/23/18	
512. Assessment Taxes	
513. School property taxes	
514. MUD taxes	
515. Other taxes	
516.	
517.	
518.	
519.	

520. Total Reduction Amount Due Seller

#### 600. Cash At Settlement To/From Seller

601. Gross Amount due to seller (line 420)	
602. Less reductions in amt. due seller (line 520)	
603. Cash To Seller	

**L. Settlement Charges**

<b>700. Total Sales/Broker's Commission based on price</b>			@ % =	Paid From	Paid From
Division of Commission (line 700) as follows:				Borrower's	Seller's
				Funds at	Funds at
				Settlement	Settlement
701.	to				
702.	to				
703.					
<b>800. Items Payable in Connection with Loan</b>					
801. Loan Origination Fee	%	to			
802. Loan Discount	%	to			
803. Appraisal Fee		to			
804. Attorney Fees (Invoice needed)		to Baker & McKenzie LLP		\$150,237.25	
805. Senior Loan		to Polsinelli		\$67,200.25	
806. Mezzanine Loan		to Polsinelli		\$64,340.00	
807. Equity / Joint Venture		to Polsinelli		\$26,417.00	
808. Commitment fee (Mezzanine lender)		to Naissance Galleria, LLC		\$161,000.00	
809. Interest 5/24/18 end 5/29/18		to National Bank of Kuwait, S.A.K.P., New York Branch, a banking corporation organized under the laws of Kuwait, acting through its New York branch		\$32,308.29	
810. Interest 5/29/18 end 6/1/18		to National Bank of Kuwait, S.A.K.P., New York Branch, a banking corporation organized under the laws of Kuwait, acting through its New York branch		\$24,287.25	
811. Interest Reserve Deposit		to National Bank of Kuwait, S.A.K.P., New York Branch, a banking corporation organized under the laws of Kuwait, acting through its New York branch		\$2,500,000.00	
812. 50 bps Upfront Fee		to National Bank of Kuwait, S.A.K.P., New York Branch, a banking corporation organized under the laws of Kuwait, acting through its New York branch		\$258,375.00	
<b>900. Items Required by Lender To Be Paid in Advance</b>					
901. Interest from	@ \$0/day				
902. Mortgage Insurance Premium for months	to				
903. Hazard Insurance Premium for years	to	HANDLED OUTSIDE OF SETTLEMENT			
<b>1000. Reserves Deposited With Lender</b>					
1001. Hazard insurance	months @	per month			
1002. Mortgage insurance	months @	per month			
1003. City property taxes	months @	per month			
1004. County property taxes	months @	per month			
1005. Assessment Taxes	months @	per month			
1006. School property taxes	months @	per month			
1007. MUD taxes	months @	per month			
1008. Other taxes	months @	per month			
1011. Aggregate Adjustment					
<b>1100. Title Charges</b>					
1101. Settlement or closing fee	to	TransAct Title, LLC Settlement Fees		\$2,500.00	
1102. Abstract or title search	to				
1103. Title examination	to				
1104. Title insurance binder	to	TransAct Title, LLC			
1105. Document preparation (Curative)	to	Umatiya Law Firm, LLC			
1106. Notary fees	to				
1107. Attorney's fees	to				
(includes above items numbers:		)			
1108. Title insurance	to	TransAct Title, LLC		\$100.00	
(includes above items numbers:		)			
1109. Lender's coverage		\$51,675,000.00/\$13,533.10			
1110. Owner's coverage		\$79,500,000.00/\$237,161.35			
1111. Escrow fee	to	TransAct Title, LLC			
1112. Guaranty Assessment Recoupment Fee	to	Texas Title Insurance Guaranty Association		\$4.50	
1113. Courier Service	to	TransAct Title-Courier		\$150.00	
1114. Erecording Fee	to	TransAct Title, LLC-Recording		\$20.00	
1115. Document Review	to	Umatiya Law Firm, PLLC			
1116. Non-Imputation Endorsement	to	TransAct Title, LLC		\$8,780.05	
1117. Adjustable Mortgage Loan	to	TransAct Title, LLC		\$20.00	
1118. Survey Amendment (OTP only)	to	TransAct Title, LLC			
1119. Not yet due/payable (MTP & BIN	to	TransAct Title, LLC		\$5.00	
1120. T19 Non-Res. Endorsemen	to	TransAct Title, LLC		\$13,108.10	
1121. Access Endorsement	to	TransAct Title, LLC		\$100.00	
1122. Contiguity Endorsement	to	TransAct Title, LLC		\$100.00	
1123. MSD MTP T-19.2 End	to	TransAct Title, LLC		\$50.00	
1124. MSD MTP T-19.3 End	to	TransAct Title, LLC		\$50.00	
1125. REM OTP T-19.1 No Amendment	to	TransAct Title, LLC		\$26,340.15	
1126. MSD OTP T-19.2 End	to	TransAct Title, LLC		\$50.00	
1127. MSD OTP T-19.3 End	to	TransAct Title, LLC		\$50.00	
<b>1200. Government Recording and Transfer Charges</b>					
1201. Recording Fees	Deed \$44.00 ; Mortgage \$184.00 ; Rel \$200.00	to TransAct Title, LLC-Recording		\$228.00	
1202. City/county tax/stamps	Deed ; Mortgage	to			
1203. State tax/stamps	Deed ; Mortgage	to			

1204. Tax certificates	to Kirby TaxNet, Inc.		
1205.	to		
<b>1300. Additional Settlement Charges</b>			
1301. Survey	to South Texas Surveying & Associates, Inc.	\$3,193.38	
1302. Pest Inspection	to		
1303. HOA Transfer Fee	to		
1304. Home Warranty	to		
1305. Third Parties - Appraisal	to Jack W. Bass II, MAI	\$2,000.00	
1306. Promotion	to NAZAR (INVOICE NEEDED)	\$1,200.00	
1307. Promotion	to Eastll Secured LLC	\$5,979.00	
1308. BBG Third Parties - ESA	to AWA, LLC dba BBG Assessment	\$2,450.00	
1309. BBG Third Parties - PCA	to AWA, LLC dba BBG Assessment	\$2,650.00	
1310. Third Parties - Valuations	to Hibco Services, LLC	\$3,731.00	
1311. UCCPlus Policy Premium	to UCCPlus Insurance	\$12,185.45	
1312.	to		
1313.	to		
1314.	to		
1315.	to		
<b>1400. Total Settlement Charges (enter on lines 103, Section J and 502, Section K)</b>		<b>\$3,369,209.67</b>	

I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a completed copy of pages 1, 2 and 3 of this HUD-1 Settlement Statement.

**GALLERIA 2425 OWNER, LLC**

a Delaware limited liability company

By: Galleria 2425 JV, LLC  
a Delaware limited liability company,  
its sole member

By: Naissance Capital Real Estate, LLC  
a Delaware limited liability company,  
its Managing Member

By:   
Azeemeh Zaheer, Managing Member

**2425 WL LLC,**  
**a New York Limited Liability Company**

By: \_\_\_\_\_  
Adam Broder, Sole Member

**SETTLEMENT AGENT CERTIFICATION**

The HUD-1 Settlement Statement which I have prepared is a true and accurate account of this transaction. I have caused the funds to be disbursed in accordance with this statement.

Settlement Agent

Date

**Warning:** It is a crime to knowingly make false statements to the United States on this or any other similar form. Penalties upon conviction can include a fine and imprisonment. For details see: Title 18 U.S. Code Section 1001 and Section 1010.

Previous Editions are Obsolete

Page 3

form HUD-1 (3/86)  
Handbook 4305.2

## EXHIBIT 6

2016-79190 / Court: 270

NO. \_\_\_\_\_

OCWEN LOAN SERVICING, LLC,

Plaintiff,

v.

CHRIS WYATT,

Defendant.

§  
§  
§  
§  
§  
§  
§  
§  
§

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

\_\_\_ JUDICIAL DISTRICT COURT

**PLAINTIFF'S ORIGINAL PETITION AND APPLICATION FOR  
TEMPORARY RESTRAINING ORDER, TEMPORARY  
INJUNCTION, AND PERMANENT INJUNCTION**

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff Ocwen Loan Servicing, LLC ("Ocwen") files this Original Petition and Application for Temporary Restraining Order, Temporary Injunction, and Permanent Injunction complaining of Defendant Chris Wyatt ("Wyatt"), and would show the Court as follows:

**DISCOVERY CONTROL PLAN**

1. Ocwen seeks monetary relief of \$100,000 or less and nonmonetary relief.
2. Ocwen intends to conduct discovery under Level 3 of the Texas Rules of Civil Procedure. This suit is not governed by the expedited-actions process in Rule 169 of the Texas Rules of Civil Procedure because Ocwen seeks injunctive relief.

**PARTIES**

3. Ocwen is a corporation that was formed in Delaware. Its principal place of business is located at 1661 Worthington Road, Suite 100, West Palm Beach, Florida 33409.
4. Wyatt is an individual who resides in Harris County Texas. He may be served at 406 Spring Lakes Haven, Spring, Texas 77373 (the "Property"), or wherever he may be found.



## **JURISDICTION**

5. Jurisdiction is proper in this Court, because the amount in controversy exceeds the jurisdictional minimum.

## **VENUE**

6. Venue is proper in this Court because all or a substantial part of the events or omissions giving rise to the claims asserted herein occurred in Harris County, Texas. Further, upon information and belief, Harris County, Texas was the county in which Wyatt resided at the time Ocwen's causes of action accrued, and it is where Wyatt currently resides.

## **FACTS**

7. Wyatt is a former employee of Litton Loan Servicing LP.
8. Litton Loan Servicing LP once was a subsidiary of Goldman Sachs Group, Inc.
9. Goldman Sachs Group, Inc. sold Litton Loan Servicing LP to Ocwen's parent corporation, Ocwen Financial Corporation, in 2011.
10. Wyatt now is the CEO of Wyatt Consulting Services, which provides advisory and expert consulting services relating to mortgage litigation, including expert testimony on behalf of borrowers in lawsuits filed against loan servicers throughout the country.<sup>1</sup>
11. Wyatt also is a frequent provider of commentary to the media. On April 29, 2016, for example, Wyatt spoke to The Huffington Post on the role of trustees under Pooling and Servicing Agreements.<sup>2</sup> The article, in pertinent part, cites what appears to be confidential memorandum sent by Deutsche Bank National Trust Company, As Trustee, and Deutsche Bank Trust Company Americas, As Trustee to their servicing agents. According to the article (which

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<sup>1</sup> See <http://www.wyattconsultingservices.com/>.

<sup>2</sup> Joel Sucher, *Foreclosures: What Role Should a Trustee Play*, Huffington Post (April 29, 2016), [http://www.huffingtonpost.com/joel-sucher/foreclosures-what-role-sh\\_b\\_9724792.html](http://www.huffingtonpost.com/joel-sucher/foreclosures-what-role-sh_b_9724792.html).

discloses some terms of the memorandum), Wyatt circulated a copy of the document to Lynn Armentrout, the Deputy Director of Housing with Brooklyn Legal Services.

12. Wyatt currently is in a dispute with Ocwen relating to its servicing of Wyatt's residential mortgage loan. In connection with that dispute, he demanded a release of a deed of trust lien against the Property. Ocwen has not agreed to Wyatt's demand.

13. On October 17, 2016, Wyatt disclosed to Ocwen's outside counsel that he had obtained confidential "agreements and procedures" ("Confidential Documents") from an "internal source." **Exhibit A.** Attached to his October 17, 2016 e-mail to Ocwen's counsel were excerpts from two non-public contractual agreements relating to a corporate reorganization.

14. According to Wyatt, his "internal source" is a current Ocwen employee and the Confidential Documents include numerous internal Ocwen documents such as written policies and procedures on loss mitigation and foreclosure, non-public contractual agreements, company guidelines, and other categories of documents not yet identified. Ocwen did not agree to release its lien against the Property after receiving the October 17, 2016 e-mail.

15. On November 7, 2016, following no resolution of the dispute relating to the Property, Wyatt sent four pages of a 149-page training manual on loan resolution processing and underwriting to Ocwen's outside counsel. **Exhibit A.** Ocwen did not agree to release its lien against the Property after receiving the November 7, 2016 e-mail.

16. Wyatt represented to Ocwen's counsel that he is in possession of "many" complete training manuals and other internal policies and procedures.

17. Wyatt stated to Ocwen's counsel that he has not yet disclosed the Confidential Documents to third parties but was contacted by several attorneys requesting copies. Wyatt identified one New York attorney by name who regularly sues Ocwen.

18. On November 11, 2016, Wyatt send a third e-mail stating: “Given that Ocwen has not disputed the authenticity of these excerpts, I must presume that the documents are authentic. Therefore, I am now considering the release of the numerous policy and procedure documents.”

**Exhibit A.**

**COUNT 1 – TRADE-SECRET MISAPPROPRIATION**

19. Ocwen incorporates the allegations in paragraphs 7 to 18 above by reference.

20. Ocwen is in the business of residential mortgage servicing. As part of its duties as a mortgage servicer, Ocwen works with borrowers to resolve loan defaults. One important default resolution option is a loan modification. A loan modification, to which borrowers have no contractual right, is an agreement to amend the terms of a loan in default in order to bring the loan current (allowing the borrower to avoid foreclosure and keep the home). Loan modifications often include capitalization of past due interest and escrow payments, a reduction in a borrower’s interest rate, and a recalculation of the borrower’s payments based on his or her ability to repay. While loan modifications made pursuant to the Home Affordable Modification Program (“HAMP”) are governed by program guidelines set by the U.S. Department of Treasury and administered by the Federal National Mortgage Association (“FNMA”), servicers also offer “private label” or “in-house” modifications. The processes and standards for in-house loan modifications are set by the individual servicers subject to any relevant investor guidelines.

21. Ocwen has developed proprietary and confidential policies, procedures, and guidelines for making in-house loan modifications and other repayment solutions available to its customers which constitute trade secrets as defined by the Texas Uniform Trade Secrets Act.

22. Ocwen’s training manual on loan modifications, for example, contains “information, including . . . a method, technique, [and/or] process . . . that: (A) derives

independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (B) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.” Tex. Civ. Prac. & Rem. Code § 134A.002(6).

23. Ocwen’s training manual on loan modifications, including the confidential methods, policies and procedures therein, gives Ocwen a competitive advantage over other mortgage servicers which only will increase once HAMP—through which many, but not all, loan modifications currently are offered—expires on December 30, 2016. The training manual therefore has significant actual and prospective value, the development of which required Ocwen to expend substantial time, effort, and resources.

24. Ocwen also has developed and maintained other methods, processes, and procedures by which it services mortgage loans from which it derives actual or potential economic value from not being generally known to its competitors.

25. The details of Ocwen’s internal loan modification programs, and the methods by which it makes such modifications available, and other details relating its mortgage servicing processes generally are unknown to and are not readily ascertainable by third parties. The same is true for other internal policies and procedures which may be in Wyatt’s possession.

26. Ocwen made a reasonable effort to keep its internal policies and procedures secret, including the methods and processes by which it offers loan modifications. Specifically, Ocwen’s internal policies and procedures are kept in “cloud” storage. Access to documents stored by Ocwen in the cloud is restricted via the Ocwen network. Such documents may be accessed only if the Ocwen employee or authorized agent is physically located at Ocwen’s offices and logged in to a password protected device that has permission to access the Ocwen

network or logged in via a secure, virtual private network made available through Ocwen. In addition, there are physical access controls that limit access to Ocwen's servicing facilities to employees and other authorized parties. Furthermore, Ocwen's employees and agents are subject to internal policies and procedures that prohibit the release or disclosure of documents, like the Confidential Documents, to parties outside of the Ocwen organization.

27. Any unauthorized distribution or disclosure by an employee of Ocwen's trade secrets is a violation of its internal policies and procedures.

28. Wyatt misappropriated Ocwen's trade secrets by acquiring them and/or having knowledge that the trade secrets were acquired by improper means.

29. Wyatt misappropriated Ocwen's trade secrets by using them without Ocwen's consent in an attempt to leverage a release of the deed of trust lien security the Property and openly threatening to disclose the same to third parties.

30. Ocwen is entitled to injunctive relief to prevent Wyatt's threatened disclosure of Ocwen's trade secrets. Alternatively, to the extent Ocwen's trade secrets already have been disclosed, Ocwen is entitled to recover its actual damages, as well as the value of the benefits, profits, or advantages unjustly gained by Wyatt by disclosing the trade secrets.

31. Wyatt's misappropriation of Ocwen's trade secrets was willful and malicious, entitling Ocwen to exemplary damages, attorneys' fees, and costs.

## **COUNT 2 - CONVERSION**

32. Ocwen incorporates the allegations in paragraphs 7 to 31 above by reference.

33. Ocwen owns the Confidential Documents and has an immediate right to exclusive possession and use of the Confidential Documents.

34. Wyatt has no legal interest or rights in the Confidential Documents.

35. Wyatt wrongfully acquired and exercised dominion and control over the Confidential Documents to Ocwen's detriment.

36. A pre-suit demand for the return of the Confidential Documents would have been useless under the totality of the circumstances. Moreover, a pre-suit demand for return of the Confidential Documents very likely would have resulted in disclosure of the same to inquiring third parties, which is precisely what this lawsuit seeks to prevent.

37. Wyatt's wrongful acts proximately caused injury to Ocwen including, but not limited to, depriving Ocwen of the confidentiality and related economic benefits of the Confidential Documents, plus its costs incurred to prevent further distribution.

38. Ocwen is entitled to, and hereby seeks, the return of the Confidential Documents and recovery of the actual and consequential damages it suffered as a result of the conversion.

### **COUNT 3 - DECLARATORY JUDGMENT**

39. Ocwen incorporates the allegations in paragraphs 7 to 38 above by reference.

40. A justiciable controversy exists between Ocwen and Wyatt concerning their legal rights to possession, control, and use of the Confidential Documents. A declaration from this Court will end the controversy or, at the very least, remove an uncertainty.

41. Ocwen is entitled to, and hereby seeks, a declaration that (a) the Confidential Documents are the sole and exclusive property of Ocwen, (b) Wyatt has no legal rights in or to the Confidential Documents, (c) Ocwen has an immediate right to the return of the Confidential Documents, (d) Wyatt should be enjoined from copying, recording possessing, using, disclosing, disseminating, and communicating the information contained within the Confidential Documents for any purpose, and (e) Wyatt should be enjoined from seeking, receiving,

possessing, disclosing, disseminating, and communication any other confidential documents or information from Ocwen to which he does not have a legal right to possess.

#### **ATTORNEYS' FEES**

42. Ocwen is entitled to recover its reasonable and necessary attorneys' fees and costs from Wyatt under Section 134A.005(3) of the Texas Civil Practice & Remedies Code.

43. Ocwen is entitled to recover its reasonable and necessary attorneys' fees and costs from Wyatt under Section 37.009 of the Texas Civil Practice & Remedies Code.

#### **APPLICATION FOR TEMPORARY RESTRAINING ORDER**

44. The allegations in paragraphs 7 to 43 above are incorporated herein by reference.

45. Ocwen asks this Court to enjoin Wyatt and any person(s) in active concert or participation with him who receive actual or constructive notice of the order from copying, recording, using, communicating, disseminating, disclosing, altering, destroying, or modifying the Confidential Documents.

46. Ocwen asks this Court to enjoin Wyatt and any person(s) in active concert or participation with him who receive actual or constructive notice of the order from seeking, viewing, or taking possession of any additional internal documents from Ocwen that are not currently in Wyatt's possession and to which he has no legal right to possess.

47. Ocwen asks this Court to order Wyatt and any person(s) in active concert or participation with him who receive actual or constructive notice of the order to return all Confidential Documents in their possession no later than seven (7) days from the issuance of a temporary restraining order.

48. Ocwen asks this Court to require Wyatt to certify under oath that he has complied with his obligations pursuant to the temporary restraining order no later than fourteen (14) days from the issuance of the temporary restraining order.

49. It is probable that Ocwen will recover from Wyatt after a trial on the merits because there is no dispute that he has obtained, possesses, and has threatened to disclose the Confidential Documents belonging to Ocwen to which he has no possessory or legal interest.

50. If this Court does not grant Ocwen's requested relief, immediate and irreparable injury, loss, or damage will occur, for which there exists no adequate remedy at law. Once disclosed, the proprietary nature of the information contained within the Confidential Documents and related economic benefits will be lost, the monetary value of which is difficult to ascertain. Disclosure of the Confidential Documents in violation of Ocwen's rights also would render ineffectual any judgment requiring Wyatt to return the Confidential Documents to Ocwen.

51. Further, injunctive relief is appropriate under Section 134A.003 of the Texas Civil Practice and Remedies Code because Wyatt misappropriated and impliedly threatened to disclose Ocwen's trade secrets. Under the circumstances, it is probable that Wyatt will disclose the Confidential Documents and related trade secrets to Ocwen's detriment.

52. Accordingly, Ocwen respectfully requests that Wyatt, and those persons in active concert or participation with him who receive actual or constructive notice of the temporary restraining order by personal service or otherwise, be restrained and enjoined from possessing, copying, recording, using, communicating, disseminating, disclosing, altering, destroying, or modifying the Confidential Documents.

53. Ocwen further requests that Wyatt and any person who receives actual or constructive notice of the temporary restraining order by personal service or otherwise be



required to return any of the Confidential Documents in their possession directly to Ocwen no later than seven (7) days from the issuance of a temporary restraining order, and that Wyatt certify his compliance with the terms of the temporary restraining order within fourteen (14) days.

54. Ex parte issuance of a temporary restraining order is appropriate under the circumstances due to the immediate and irreparable injury, loss, or damage expected to result to Ocwen before notice can be served and a hearing had thereon. Wyatt's November 11, 2016 e-mail indicates disclosure of the Confidential Documents could occur with the click of a button at any time. Further, providing Wyatt advance notice of the proposed injunctive relief will defeat the purpose thereof and very likely result in the imminent and irreparable harm that Ocwen seeks to avoid.

55. Ocwen is willing and able to post bond.

#### **REQUEST FOR TEMPORARY INJUNCTION**

56. Ocwen asks this Court to set its request for a temporary injunction for a hearing and, after the hearing, issue a temporary injunction against Wyatt.

#### **REQUEST FOR PERMANENT INJUNCTION**

57. Ocwen asks this Court to set its request for a permanent injunction for a full trial on the merits and, after the trial, issue a permanent injunction against Wyatt.

#### **REQUEST FOR DISCLOSURE**

58. Ocwen requests that Wyatt disclose the information or material described in Rule 194.2 of the Texas Rules of Civil Procedure within 50 days of the service of this request.

**PRAYER**

WHEREFORE, Plaintiff Ocwen Loan Servicing, LLC respectfully requests that the Court enter judgment in its favor against Defendant Chris Wyatt for the following:

- a. A temporary restraining order on the terms requested above.
- b. A temporary injunction.
- c. A permanent injunction.
- d. Actual damages.
- e. Exemplary damages.
- f. Attorneys' fees.
- g. Costs.
- h. All other relief to which Ocwen may be justly entitled.

Respectfully submitted,

/s/ Tara L. Elgie

Tara L. Elgie  
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telgie@hunton.com  
Adam C. Ragan  
State Bar No. 24079172  
aragan@hunton.com

**HUNTON & WILLIAMS LLP**  
1445 Ross Ave., Suite 3700  
Dallas, Texas 75202  
214-979-3000  
214-880-0011 (fax)

**ATTORNEYS FOR PLAINTIFF OCWEN  
LOAN SERVICING, LLC**

## EXHIBIT 7

CASE NO. 2016-79190

OCWEN LOAN SERVICING, LLC,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	
v.	§	HARRIS COUNTY, TEXAS
	§	
CHRIS WYATT,	§	
	§	
Defendant.	§	270th JUDICIAL DISTRICT

**AGREED FINAL JUDGMENT AND PERMANENT INJUNCTION**

The Court, after considering the Agreed Motion for Entry of Final Judgment and Permanent Injunction (“Motion”) submitted by Plaintiff Ocwen Loan Servicing, LLC (“Ocwen”) and Defendant Chris Wyatt (“Wyatt”) (collectively, the “Parties”), and all applicable authorities, concludes the Motion is well-taken and hereby GRANTED.

It is stipulated that the Parties have compromised and settled the claims pending in the above-styled and –numbered case. It is further stipulated that the Parties agree to and do not contest the entry of this Agreed Final Judgment and Permanent Injunction.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Wyatt received, and as of the filing of this lawsuit had in his possession, certain confidential “agreements and procedures” from an “internal source” at Ocwen (“Confidential Documents”).<sup>1</sup>

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<sup>1</sup> The term “Confidential Documents” as used in this Agreed Final Judgment and Permanent Injunction means any and all Ocwen-related confidential and/or proprietary documents, in whatever form, that Wyatt has received or receives in the future from the “internal source” referenced in his October 17, 2016 e-mail to Ocwen’s outside counsel (attached as Exhibit A to Ocwen’s original petition), including but not limited to any business plans, policies, procedures, guidelines, agreements, formulas, patterns, compilations, programs, devices, methods, techniques, processes, practices, financial data, lists of actual or potential customers or suppliers, inventions, products, patent applications, and other proprietary rights, specifications, drawings, sketches, models, samples, tools, computer programs, technical information, or other related information. The term “Confidential Documents” does not include documents separately obtained or possessed by Wyatt from another source, including but not limited to Ocwen, its

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Wyatt has no legal rights to or any possessory interest in the Confidential Documents.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Wyatt and Ocwen have agreed to resolve claims relating to Wyatt's possession of Confidential Documents and, further, that the existence of their agreement is good reason for the issuance of a permanent injunction.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Wyatt, his agents, employees, attorneys, assigns, and any person or entity in active concert or participation with Wyatt who receive actual or constructive notice of the order are permanently restrained and enjoined from copying, recording, using, communicating, disseminating, disclosing, altering, destroying, or modifying the Confidential Documents and their contents.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Wyatt, his agents, employees, attorneys, assigns, and any person or entity in active concert or participation with Wyatt who receive actual or constructive notice of the order shall return all Confidential Documents (if any) in their possession, custody or control to Ocwen's counsel of record in this case no later than seven (7) calendar days from the entry of this Agreed Final Judgment and Permanent Injunction.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, should Wyatt receive Confidential Documents within one (1) calendar year of the entry of this order, Wyatt, his agents, employees, attorneys, assigns, and any person or entity in active concert or participation with Wyatt who receive actual or constructive notice of the order shall return all such Confidential

---

attorneys, or his clients via legal process specifically authorized by controlling state or federal court rules, subject to an appropriate protective order preserving confidentiality of such documents, for use in connection with his consulting business or in connection with his testimony as an expert witness.

Documents then in their possession, custody or control to Ocwen's counsel of record in the manner agreed by the parties in their Confidential Settlement Agreement.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, except for the relief provided herein, Ocwen's claims in the above-styled lawsuit are dismissed without prejudice.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Parties shall bear their own attorneys' fees and costs incurred as a result of this lawsuit.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Harris County District Clerk shall issue all writs and process necessary to enforce this Agreed Final Judgment and Permanent Injunction.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Harris County District Clerk release the cash deposit of \$500 made by Ocwen in lieu of bond in this matter on November 16, 2016, less any applicable administrative fee, to Ocwen's counsel of record.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this is a Final Judgment for all purposes. All relief not expressly granted herein is denied.

Signed this \_\_ day of \_\_\_\_\_, 2017.

Signed:   
3/24/2017

\_\_\_\_\_  
PRESIDING JUDGE

AGREED:

/s/ Adam C. Ragan

Tara L. Elgie

State Bar No. 24091821

telgie@hunton.com

Adam C. Ragan

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aragan@hunton.com

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214-740-7110 (fax)

**ATTORNEYS FOR PLAINTIFF OCWEN  
LOAN SERVICING, LLC**

/s/ Chris Wyatt

Chris Wyatt

406 Spring Lakes Haven

Spring, Texas 77373

832-768-0003

[cwyatt@wyattconsultingservices.com](mailto:cwyatt@wyattconsultingservices.com)

**PRO SE DEFENDANT**

## EXHIBIT 8



# EXHIBIT

## B

Unofficial Copy Office of Marilyn Burgess District Clerk

## DECLARATION OF QUANELL X

I, Quanell X Farrakhan, am a person over the age of eighteen (18) years and am competent to give this declaration. I have personal knowledge of the facts set forth in this declaration, and such facts are true and correct.

In October 2020, I met with Osama Abdullatif. During that meeting, Mr. Abdullatif told me he had text messages from Chris Wyatt. Mr. Abdullatif said he felt like Mr. Wyatt was trying to extort him. I understood Mr. Wyatt to be a former employee of Ali Choudhri. Mr. Abdullatif told me that he Mr. Wyatt wanted to sell Mr. Choudhri's business records/files and property.

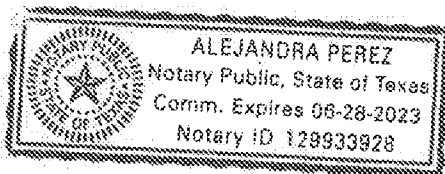
Mr. Abdullatif said he had in his phone text messages from Mr. Wyatt where Mr. Wyatt asked Mr. Abdullatif to pay \$200,000 in exchange for assisting and selling information and property to Mr. Abdullatif. Mr. Abdullatif told me he wanted to pay Mr. Wyatt for information and business records/files of Mr. Choudhri.

During this meeting Mr. Abdullatif showed me his phone and told me about a series of text messages from Chris Wyatt. The messages identified specific documents Mr. Wyatt was able to steal from his employer, Jetall companies, prior to his resignation. Wyatt's messages also touted his personal knowledge of Jetall's business operations and its President Ali Choudhri. Wyatt apparently believed his stolen documents and information were extremely valuable. The series of text messages culminated with a request by Wyatt for \$200,000.00 in exchange for his cooperation, information and the stolen property. Based on the text messages Mr. Abdullatif told me and related discussions, Mr. Wyatt asked Mr. Abdullatif to pay \$200,000 in exchange for assisting Mr. Abdullatif and providing him with documents and information belonging to Ali Choudhri. Mr. Wyatt asked Mr. Abdullatif to pay \$200,000 in exchange for assisting Mr. Abdullatif and providing him with documents and information belonging to Ali Choudhri.

My date of birth is 12-7-70, and my address is 10061 Rebel Rd.  
I declare under penalty of perjury that the foregoing is true and correct.

Executed in Harris County, Texas, on the 29 day of December, 2020.

  
\_\_\_\_\_  
Quanell X Farrakhan



## EXHIBIT 9

# EXHIBIT 14

## THIRD DECLARATION OF QUANELL X

I, Quanell X Farrakhan, am a person over the age of eighteen (18) years and am competent to give this declaration. I have personal knowledge of the facts set forth in this declaration, and such facts are true and correct.

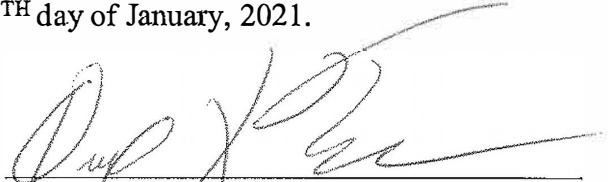
On approximately January 20, 2021, I received the text attached as Exhibit A hereto from Wayne Dolcefino.

In regards to my prior Declarations and discussions of meetings with Osama Abdullatif, Abdullatif informed me in one of the meetings that Chris Wyatt had told him that Ali Choudhri had hired me to kill Abdullatif. Since this was obviously false, I spoke with officers from the Houston Police Department concerning these allegations and they confirmed to me that they had dismissed Wyatt's false accusations against me and Choudhri as a hoax.

My date of birth is December 7, 1970, and my address is 10061 Rebel Road, Houston, TX 77016.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Harris County, Texas, on the 25<sup>TH</sup> day of January, 2021.

  
\_\_\_\_\_  
Quanell X Farrakhan



that brother you can  
intimidate with this  
foolishness

Delivered

The evidence. Go to  
war

Yesterday 6:22 PM

We will be reporting  
the falsities in your  
affidavit to the da.  
You disappoint me

[https://youtu.be/  
LhRO1mxWh8](https://youtu.be/LhRO1mxWh8)



iMessage



DX  
*[Handwritten signature]*

## EXHIBIT 10

# EXHIBIT

4

Unofficial Copy Office of Marilyn Burgess District Clerk

## DECLARATION OF QUANELL X

I, Quanell X Farrakhan, am a person over the age of eighteen (18) years and am competent to give this declaration. I have personal knowledge of the facts set forth in this declaration, and such facts are true and correct.

On approximately January 6, 2021, I was contacted by Wayne Dolcefino, an alleged "investigative reporter" who said "Why the f\*#! did you lie?". On information and belief, I believe he was referring to my prior declaration dated December 28, 2020 regarding my meeting with Osama Abdullatif ("Prior Declaration"). Dolcefino told me that I had twenty-four hours to produce evidence of my meeting with Osama Abdullatif and, on this information and belief, was attempting to intimidate me regarding my Prior Declaration and told me that the meeting I had with Abdullatif "never happened". Prior to this conversation, Dolcefino had told me that he had been hired by Abdullatif. Dolcefino told me that if I did not provide such evidence, that "He would go to war with me".

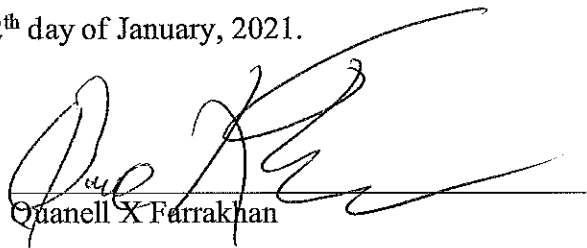
He had also told me previously that the incoming judge of the 333<sup>rd</sup> District Court of Harris County, Brittanye Morris, was too young, was incompetent, and was only on the bench because she was Black and ran as a democrat in Harris County. On this information and belief, Abdullatif was planning to use Dolcefino to force Judge Morris to recuse herself from the litigation involving Ali Choudhri, Ali Mokaram, and Osama Abdullatif and would use Christopher Wyatt to assist in this regard. On this information and belief, Abdullatif believed that Judge Morris would not be favorable to him and wanted the case moved to another Harris County judge that he felt he could influence.

I have since learned that Abdullatif, Mokaram, and their counsel have sought to recuse Judge Morris. I am providing this Declaration because I am outraged that such a sinister plot has been hatched against a promising young Black woman of integrity who has just assumed the bench. I have also learned that Wayne Dolcefino has physically gone to the Harris County courthouse to, on the information and belief of what he did to me described above, to intimidate and harass Judge Morris under the guise of "reporting" that he has been paid to do by Abdullatif.

My date of birth is December 7, 1970, and my address is 10061 Rebel Road, Houston, TX 77016.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Harris County, Texas, on the 12<sup>th</sup> day of January, 2021.

  
Quanell X Farrakhan



## EXHIBIT 11



# Christopher A Wyatt

Generated on: 10/19/2020

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**Please remember, you are restricted from using this information for:**

**Employment Screening:**

You may not use this information when evaluating a person for employment, reassignment, promotion, or retention

**Hiring of Household Workers:**

Including, but not limited to, nannies and domestic workers

**Tenant Screening**

Including, but not limited to, leasing a residential or commercial space

**Educational Qualification:**

Including, but not limited to, a person's qualifications for an educational program or scholarship

**Credit or Insurance:**

Accessing the risk of existing credit obligations of an individual and/or determining eligibility for issuing credit or insurance

**Business Transactions Initiated by an Individual Customer:**

Reviewing a personal customer account to determine whether the person continues to meet the terms of the account

Using this information in these ways violates both our [Terms & Conditions](#) and the law, and can lead to possible criminal penalties. We take this very seriously, and reserve the right to terminate user accounts and/or report violators to law enforcement as appropriate.

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# Christopher A Wyatt

Spring, TX / Age 58

## Personal Overview

Name:	Christopher A Wyatt
Age:	58
Born on:	11/1961
Address:	406 Spring Lakes Hvn Spring, TX 77373
Aliases:	Carol Wyatt
	Christopher A Wyatt
	Christopher Wyatt
	Chris Wyatt
	A Wyatt
	C Wyatt
	Chrisopher Wyatt
	Christoph A Wyatt
	Christopher Etal Wyatt
	Chris Alan Wyatt
	Christopher Alan Wyatt
	Wyatt Christoph
	Sandi Wyatt

## Contact Info

19 | Contact Info Found

#	Phone Numbers	Phone Type
1	832-768-0003 (Best Match)	Mobile
2	727-534-9655	Mobile
3	281-787-0904	Mobile
4	281-651-6035	Home Phone
5	713-651-6035	
6	281-651-5551	Work Fax
7	832-620-9023	Possible Cell Phone
8	832-488-3304	Possible Cell Phone
9	281-288-0306	
10	6516035	
11	917-620-7247	

#	Email Addresses	Email Type
1	wyattc71@yahoo.com (Best Match)	Personal
2	wyattsping@aol.com	Personal
3	wyattspring@aol.com	Personal
4	brenham@cwix.com	
5	sldwyatt06@gmail.com	
6	brenham@cw1.com	
7	cwyatt1643@gmail.com	
8	cwyatt@peoplepc.com	

## Address History

7 | Addresses Found

#	Address	Address Type	Last Seen Date
1	406 Spring Lakes Hvn Spring, TX 77373 (Best Match)		07/2016
2	9311 Zurich Ct Houston, TX 77070		10/1999
3	4707 Pin Oak Park Apt 522 Houston, TX 77081		07/1987
4	957 PO Box Porter, TX 77365		07/1987
5	5454 Newcastle St Apt 1946 Houston, TX 77081		N/A
6	1333 Gears Rd Apt 2602 Houston, TX 77067		N/A
7	2014 Lexington Woods Dr Spring, TX 77373		N/A

## Relatives

20 | Relatives Found

### 1st Degree

#	Name	Age	Address
1	TINA MARIE WYATT	55	<p>29915 Roberts Trl Magnolia, TX 77354 First seen: 06/2018, Last seen: 06/2020</p> <p>16403 Grants Manor Ct Cypress, TX 77429 First seen: 05/2009, Last seen: 05/2009</p> <p>2014 Lexington Woods Dr Spring, TX 77373 First seen: N/A, Last seen: N/A</p>
2	SANDRA L NOWAK	53	<p>406 Spring Lakes Hvn Spring, TX 77373 First seen: 07/2006, Last seen: 10/2014</p> <p>8727 Point Park Dr Apt 1122 Houston, TX 77095 First seen: 12/2004, Last seen: N/A</p> <p>820 Gessner Rd Ste 10 Houston, TX 77024 First seen: N/A, Last seen: N/A</p>

3	HAYDEN NICHOLAS WYATT	24	1625 N Whistling Straits Ave Apt 206 Fayetteville, AR 72704 First seen: N/A, Last seen: N/A  406 Spring Lakes Hvn Spring, TX 77373 First seen: N/A, Last seen: N/A
4	HAYLEIGH WYATT	N/A	9844 Cypresswood Dr Apt 1902 Houston, TX 77070 First seen: 02/2017, Last seen: 02/2017  29915 Roberts Trl Magnolia, TX 77354 First seen: N/A, Last seen: N/A
5	JERRY D WYATT	81	406 Spring Lakes Hvn Spring, TX 77373 First seen: 06/2013, Last seen: 06/2013  4317 Sablan Ln Milton, FL 32583 First seen: 03/2012, Last seen: 03/2012  1817 Wheeler Rd Gulf Breeze, FL 32563 First seen: 04/2005, Last seen: 04/2005

## 2nd Degree

#	Name	Age	Address
1	JATONA LOUISE WADE	60	555 Spring Park Center Blvd Apt 12202 Spring, TX 77373 First seen: 04/2002, Last seen: 04/2002  1300 SW 108th Pl Oklahoma City, OK 73170 First seen: N/A, Last seen: N/A  25650 Interstate 45 Spring, TX 77386 First seen: N/A, Last seen: N/A
2	ALBERT THOMAS WADE	37	30410 Highland Ct Magnolia, TX 77354 First seen: 10/2000, Last seen: 03/2001  162 S Walden Elms Cir Spring, TX 77382 First seen: N/A, Last seen: N/A  11415 Autumn Chase Dr Houston, TX 77065 First seen: N/A, Last seen: N/A
3	DANA W WADE	59	19022 Buffalo River Way Houston, TX 77084 First seen: 12/1995, Last seen: 05/2017  5454 Newcastle St Apt 106 Houston, TX 77081 First seen: N/A, Last seen: N/A  3231 Tynemeadow Ct Katy, TX 77449 First seen: N/A, Last seen: N/A
4	TIMOTHY W WADE	59	19022 Buffalo River Way Houston, TX 77084 First seen: 12/1994, Last seen: 12/2017  5454 Newcastle St Apt 1837 Houston, TX 77081 First seen: 07/1993, Last seen: 07/1994  3231 Tynemeadow Ct Katy, TX 77449 First seen: N/A, Last seen: N/A

5	MADISON NOWAK	N/A	20819 Magnolia Brook Ln Cypress, TX 77433 First seen: 04/2020, Last seen: 04/2020
6	KENNETH W DAVILA	54	14735 Kendallbrook Dr Houston, TX 77095 First seen: 11/2007, Last seen: 10/2015  7503 Log Cradle Dr Houston, TX 77041 First seen: N/A, Last seen: N/A  13606 Chimney Sweep Dr Houston, TX 77041 First seen: N/A, Last seen: N/A
7	ELEAZAR P DAVILA	76	14735 Kendallbrook Dr Houston, TX 77095 First seen: 07/2007, Last seen: 03/2017  13606 Chimney Sweep Dr Houston, TX 77041 First seen: 09/2006, Last seen: 09/2006  1103 E 23rd St Apt 2 Houston, TX 77009 First seen: 11/1995, Last seen: 01/2003
8	LUCY MARTINEZ	75	14735 Kendallbrook Dr Houston, TX 77095 First seen: 07/2007, Last seen: 02/2018  17519 Wild Willow Ln Houston, TX 77084 First seen: 06/2004, Last seen: 03/2007  13606 Chimney Sweep Dr Houston, TX 77041 First seen: N/A, Last seen: N/A
9	DARLENE D LOPEZ	51	14735 Kendallbrook Dr Houston, TX 77095 First seen: 09/2007, Last seen: 06/2020  17519 Wild Willow Ln Houston, TX 77084 First seen: 04/2004, Last seen: 08/2007  5819 Greenpark Manor Ln Houston, TX 77085 First seen: N/A, Last seen: N/A
10	MARIA LOPEZ DAVILA	54	7311 Log Cradle Dr Houston, TX 77041 First seen: 04/2020, Last seen: 04/2020  2311 Baylor St Houston, TX 77009 First seen: 11/1999, Last seen: 04/2005
11	MARIA DAVILA	N/A	7311 Log Cradle Dr Houston, TX 77041 First seen: 04/2020, Last seen: 04/2020  14735 Kendallbrook Dr Houston, TX 77095 First seen: 07/2016, Last seen: 07/2016  8440 Easton Commons Dr Apt 514 Houston, TX 77095 First seen: N/A, Last seen: N/A

12	LUCITA P DAVILLA	89	7935 Ellinger Ln Houston, TX 77040 First seen: 01/2018, Last seen: 01/2018  7937 Ellinger Ln Houston, TX 77040 First seen: 08/2012, Last seen: 06/2013  14950 Meyer Ave Allen Park, MI 48101 First seen: N/A, Last seen: N/A
13	GABRIEL R DAVILA	50	2840 Shadowbriar Dr Apt 804 Houston, TX 77077 First seen: 09/2008, Last seen: 06/2014  10498 Fountain Lake Dr Apt 134 Stafford, TX 77477 First seen: N/A, Last seen: N/A  11770 Westheimer Rd Apt 2308 Houston, TX 77077 First seen: N/A, Last seen: N/A
14	TONYA L WYATT	60	52511 McKenzie Hwy Spc 9 Blue River, OR 97413 First seen: 04/2020, Last seen: 04/2020  16331 Sandalwood St Fountain Valley, CA 92708 First seen: 10/1993, Last seen: 07/2016  11376 69th Ave Seminole, FL 33772 First seen: N/A, Last seen: N/A
15	PERRY DON WYATT	81	11376 69th Ave Seminole, FL 33772 First seen: 07/2007, Last seen: 11/2008  503 150th Ave Slip 20 Madeira Beach, FL 33708 First seen: 02/1999, Last seen: 04/2002

## Neighbors

**10** | Neighbors  
Found

#	Name	Age	Address
1	HERBERT P LEYENDECKER	83	407 Spring Lakes Hvn Spring, TX 77373 First seen: 07/1987, Last seen: 07/2020
2	DAN M LONG	62	403 Spring Lakes Hvn Spring, TX 77373 First seen: 07/1987, Last seen: 07/2020
3	JOANNE M LONG	64	403 Spring Lakes Hvn Spring, TX 77373 First seen: 07/1987, Last seen: 07/2020
4	NORMA KAY FITZCHARLES	81	402 Spring Lakes Hvn Spring, TX 77373 First seen: 07/1987, Last seen: 07/2020
5	GARY MITCHELL	N/A	9314 Zurich Ct Houston, TX 77070 First seen: 12/2017, Last seen: 07/2020



6	FRANCES BARRELLI	N/A	9303 Zurich Ct Houston, TX 77070 First seen: 02/2019, Last seen: 07/2020
7	JENNIFER L JEZ	N/A	9302 Zurich Ct Houston, TX 77070 First seen: N/A, Last seen: 07/2020
8	JENNIFER LYNN JEZ	37	9302 Zurich Ct Houston, TX 77070 First seen: N/A, Last seen: 07/2020
9	JORDAN E BOUCHER	N/A	4707 Pin Oak Park Apt 515 Houston, TX 77081 First seen: 01/2018, Last seen: 07/2020
10	DARIUS DONTREAL LEWIS	25	4707 Pin Oak Park Apt 515 Houston, TX 77081 First seen: 01/2018, Last seen: 07/2020

## Associates

1 | Associates Found

#	Name	Age	Address
1	KENIA LOPEZ	N/A	2014 Lexington Woods Dr Spring, TX 77373 First seen: 12/2016, Last seen: 04/2018

## Professional

8 | Jobs Found

#	Company	Title	Industry	Started on	Ended on
1	WYATT CONSULTING SERVICES	CHIEF EXECUTIVE OFFICER	N/A	N/A	N/A
2	BREHAM CLEANERS, INC.	PRESIDENT	N/A	N/A	N/A
3	BREHAM CLEANERS, INC.	DIRECTOR	N/A	N/A	N/A
4	BREHAM CLEANERS, INC.	P	N/A	N/A	N/A
5	BANK UNITED	N/A	N/A	N/A	N/A
6	Wyatt Consulting Services	CEO	Legal Services	05/01/2010	N/A
7	Litton Loan Servicing	VP	N/A	01/01/2001	12/31/2010
8	columbia wire iron works	N/A	N/A	N/A	N/A

## Education

1 | Schools Found

#	School	Degree	Dates Attended
1	University of North Texas	BA/Science, Physics	N/A to N/A

## Username

003895

## Social Media

12 | Social Media Found

#	Network	Profile Link
1	linkedin	<a href="https://www.linkedin.com/in/chris-wyatt-0383a942">https://www.linkedin.com/in/chris-wyatt-0383a942</a>
2	complaintsboard.com	<a href="https://www.complaintsboard.com/complaints/union-telecom-c496517.html">https://www.complaintsboard.com/complaints/union-telecom-c496517.html</a>
3	litton-loan-servicing.pissedconsumer.com	<a href="https://litton-loan-servicing.pissedconsumer.com/new-jersey/piscataway-township/RT-AB.html">https://litton-loan-servicing.pissedconsumer.com/new-jersey/piscataway-township/RT-AB.html</a>
4	complaintsboard.com	<a href="https://www.complaintsboard.com/complaints/nationstar-mortgage-lewisville-texas-c278422.html">https://www.complaintsboard.com/complaints/nationstar-mortgage-lewisville-texas-c278422.html</a>
5	other	<a href="http://www.wyattconsultingservices.com">http://www.wyattconsultingservices.com</a>
6	other	<a href="https://www.linkedin.com/school/university-of-north-texas/">https://www.linkedin.com/school/university-of-north-texas/</a>
7	other	<a href="https://www.linkedin.com/redir/redirect">https://www.linkedin.com/redir/redirect</a>
8	facebook	<a href="https://www.facebook.com/sldwyatt">https://www.facebook.com/sldwyatt</a>
9	klout	<a href="http://klout.com/SandiWyatt">http://klout.com/SandiWyatt</a>
10	pinterest	<a href="http://www.pinterest.com/sldwyatt/">http://www.pinterest.com/sldwyatt/</a>
11	twitter	<a href="https://twitter.com/SandiWyatt">https://twitter.com/SandiWyatt</a>
12	gravatar	<a href="https://gravatar.com/wyattspring">https://gravatar.com/wyattspring</a>

## Photos

4 | Photos Found

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## Possible Owned Properties

1 | Properties Found

**Disclaimer:** Please be advised that assets may be current or historical and actual value varies.

#	Address	Value	Year Built	Beds	Baths	Owners
1	406 SPRING LAKES HVN SPRING, TX 77373	\$284,153	1999	4	4	CHRISTOPHER A WYATT

## Possible Owned Automobiles

5 | automobiles Found

**Disclaimer:** Please be advised that assets may be current or historical and actual value varies.

#	Description	MSRP	Est. Value	VIN	Registered To	Match Type
1	2012 NISSAN SENTRA	\$19,390	\$8,976	3N1AB6AP3CL735840	HAYDEN WYATT	Partial
2	2005 CHEVROLET SILVERADO 2500HD	\$37,520	\$16,550	1GCHC23245F949123	CHRISTOPHERA WYATT	Partial

3	2003 DODGE RAM PICKUP 1500	\$31,060	\$8,326	1D7HA18D53S329885	CHRISTOPHER WYATT	Exact
4	2014 DODGE DURANGO	\$35,995	\$23,489	1C4RDHDG7EC591726	SANDRA WYATT	Partial
5	1999 FORD EXPLORER	\$34,125	\$18,737	1FMZU32E9XUA27993	CHRISTOPHER WYATT	Exact

Possible Owned Aircraft

0 | Aircraft Found

Possible Owned Watercrafts

0 | Watercrafts Found

Criminal & Traffic Records

6 | Criminal Records

---

## 1. CRIMINAL RECORD

**Name:** CHRISTOPHER ALAN WYATT  
**Date of birth:** 11/30/1961  
**County:** DALLAS  
**State:** TX  
**Race:** WHITE  
**Sex:** Male

### Offense Details

**Case Number:** M-8339849  
**Date:** 04/01/1983

### Court Details

**Case Number:** M-8339849  
**Date:** 09/18/1986  
**Description:** CRIMINAL COUNTY COURT 6  
**Disposition:** AGREED PLEA OF GUILTY BEFORE THE COURT.  
**Level:** MISDEMEANOR CLASS A  
**Offense:** CRIM TRESPASS A

### Arrest Details

**Agency:** TX0570001

---

## 2. CRIMINAL RECORD

**Name:** CHRISTOPHER ALAN WYATT  
**Date of birth:** 11/30/1961  
**County:** DALLAS  
**State:** TX  
**Race:** WHITE  
**Sex:** Male

### Offense Details

**Case Number:** F-8385297  
**Date:** 04/01/1983

### Court Details

**Case Number:** F-8385297  
**Date:** 06/21/1983  
**Description:** CRIMINAL DISTRICT COURT 2  
**Disposition:** FELONY CASE TRANSFERRED TO A COUNTY CRIM  
**Offense:** CRIM TRES BLDG

### Arrest Details

**Date:** 04/01/1983  
**Agency:** TX0570100

---

### 3. CRIMINAL RECORD

**Name:** CHRIS WYATT  
**Date of birth:** 11/30/1961  
**County:** DALLAS  
**State:** TX  
**Race:** WHITE  
**Sex:** Male

#### Offense Details

**Case Number:** M-8338793  
**Date:** 10/03/1982

#### Court Details

**Case Number:** M-8338793  
**Date:** 01/02/1986

**Description:** CRIMINAL COUNTY COURT 4  
**Disposition:** CHARGE DISMISSED.  
**Level:** MISDEMEANOR CLASS A  
**Offense:** THEFT 20-200 CK

#### Arrest Details

**Agency:** TX0570001

---

#### 4. CRIMINAL RECORD

**Name:** CHRISTOPHER ALAN WYATT  
**Date of birth:** 11/30/1961  
**County:** DALLAS  
**State:** TX  
**Race:** WHITE  
**Sex:** Male

##### Offense Details

**Case Number:** MB7903084

##### Court Details

**Case Number:** MB7903084  
**Date:** 09/19/1979  
**Description:** CRIMINAL COUNTY COURT 2  
**Disposition:** AGREED PLEA OF GUILTY BEFORE THE COURT.  
**Fine:** 10000  
**Offense:** UNLAWFUL WEAPON

---

## 5. CRIMINAL RECORD

**Name:** CHRISTOPHER ALAN WYATT  
**Date of birth:** 11/30/1961  
**State:** TX  
**Weight:** 120  
**Hair:** BROWN  
**Eyes:** BROWN  
**Race:** WHITE  
**Sex:** Male

### Offense Details

#### Court Details

**Date:** 07/29/1983  
**Disposition:** CONVICTED Status:COURT PHASE  
**Offense:** BURGLARY

#### Arrest Details

**Date:** 05/19/1983  
**Agency:** PLANO PD



## 6. CRIMINAL RECORD

**Name:** CHRISTOPHER ALAN WYATT  
**Date of birth:** 11/30/1961  
**State:** TX  
**Weight:** 120  
**Hair:** BROWN  
**Eyes:** BROWN  
**Race:** WHITE  
**Sex:** Male

### Offense Details

#### Court Details

**Date:** 07/29/1983  
**Disposition:** CONVICTED Status:COURT PHASE  
**Offense:** BURGLARY

#### Arrest Details

**Date:** 05/19/1983  
**Agency:** PLANO PD

## Bankruptcies

0 | Bankruptcy  
Records

## Judgments & Liens

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## EXHIBIT 12

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

In re ) CASE NO: 23-34815 (JPN)  
 )  
GALLERIA 2425 Owner, LLC, ) Houston, Texas  
 )  
Debtor. ) Monday, June 17, 2024  
 )  
 ) 9:00 a.m. to 7:35 p.m.  
-----)

TRIAL

BEFORE THE HONORABLE JEFFREY P. NORMAN  
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For Debtor: REESE W. BAKER, ESQ.  
Baker & Associates  
950 Echo Lane, Suite 300  
Houston, TX 77024

For 2425 WL, LLC: H. GRAY BURKS, IV, ESQ.  
BurksBaker, PLLC  
950 Echo Lane, Suite 300  
Houston, TX 77024

STEPHEN SATHER, ESQ.  
MARK E. SMITH, ESQ.  
Barron & Newburger, P.C.  
7320 North Mopac Expressway  
Suite 400  
Austin, TX 78731

For Ali Choudhri,  
pro se: ALI CHOUDHRI  
2425 West Loop South, 11th Floor  
Houston, TX 77027

For the Trustee: R.J. SHANNON, ESQ.  
Shannon & Lee LLP  
2100 Travis Street, Suite 1525  
Houston, TX 77002

1 For National Bank of ANDREW M. TROOP, ESQ.  
Kuwait, S.A.K.P., New PATRICK E. FITZMAURICE, ESQ.  
2 York Branch: Pillsbury Winthrop Shaw Pittman  
31 West 52nd Street  
3 New York, NY 10019-6131  
CHARLES C. CONRAD, ESQ.  
4 Pillsbury Winthrop Shaw Pittman  
Two Houston Center  
5 909 Fannin, Suite 2000  
Houston, TX 77010-1028

6  
Court Reporter: TRACEY CONRAD

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Transcribed by: Veritext Legal Solutions  
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Mineola, NY 11501  
9 Tel: 800-727-6396

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25 Proceedings recorded by electronic sound recording;  
Transcript produced by transcription service.

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1                   HOUSTON, TEXAS; MONDAY, JUNE 17, 2024; 9:00 a.m.

2                   (Call to Order)

3                   THE COURT: Good morning. We're on the record for  
4 June 17, 2024. The first matter set is the motion of the  
5 trustee for a protective order, Number 467.

6                   Mr. Shannon, I'm assuming you're going to be  
7 speaking for the trustee.

8                   MR. SHANNON: Yes, Your Honor. R.J. Shannon, on  
9 behalf of the trustee.

10                  THE COURT: All right, and Mr. Sather, are you  
11 going to be speaking for 2425 WL?

12                  MR. SATHER: Mr. Burks will be taking the lead for  
13 our side.

14                  THE COURT: Okay. Thank you.

15                  MR. SATHER: However, Mr. Smith will be appearing  
16 on the motion for protective order.

17                  MR. BURKS: You've called a motion for protective  
18 order and, Mr. Sather, I didn't understand. That's the only  
19 thing you're asking --

20                  THE COURT: That's the only thing I'm asking  
21 about.

22                  MR. SATHER: Oh, I'm sorry.

23                  THE COURT: So Mr. Burks is going to speak on that  
24 particular motion, because it's the only thing I'm calling  
25 right now.



1           MR. SATHER: Oh, no. Actually, Mark Smith will  
2 speak on that.

3           MR. SMITH: I'll be speaking, Your Honor. Mark  
4 Smith.

5           THE COURT: Okay. Thank you.

6           All right. Mr. Shannon, what's the status?

7           MR. BURKS: Thank you, Your Honor.

8           MR. SHANNON: Thank you, Your Honor. Again, R.J.  
9 Shannon, on behalf of the trustee. Yes, this motion is, I  
10 guess, going forward. The motion was filed at Docket 467.  
11 The court entered an order granting it in part at 468, and  
12 the trustee filed a witness and exhibit list at Docket 505  
13 just with respect to this particular motion.

14           Your Honor, to expedite things, we filed a  
15 declaration for me about this, and that's at Docket 505-1.  
16 I believe perhaps the easiest way to do that would be to  
17 address that first, have that admitted or not admitted along  
18 with the rest of the exhibits, and then do argument.

19           THE COURT: Okay. That's fine. So at this point  
20 in time, do you want to offer 505-1 through 15? Is that  
21 what you're asking?

22           MR. SHANNON: Yes, Your Honor.

23           THE COURT: All right. So let me go to Mr. Smith.  
24 Do you have any objection to 505-1 through 15, or excuse me,  
25 through 16?

1 MR. SMITH: No objection, Your Honor.

2 THE COURT: Okay. They're admitted.

3 (Trial Exhibits 505-1 - 505-16 entered into  
4 evidence)

5 MR. SHANNON: Thank you, Your Honor. And with  
6 that, that's all the evidence we have, and we'd move to  
7 argument unless they have evidence.

8 THE COURT: All right. Mr. Smith?

9 MR. SMITH: Your Honor, if we're just talking  
10 about his 505, we have no objection. You know, all I would  
11 say is with regard to the necessity, I believe it's, what,  
12 ten hours on this motion. Just to give you a little of the  
13 background, there was an email sent --

14 THE COURT: No one can see you unless  
15 (indiscernible) appearing online.

16 MR. SMITH: Sorry about that, Your Honor. There  
17 was an email sent to Mr. Shannon on the 10th asking for  
18 dates for the deposition. He responded basically that there  
19 was no time available during that week. After conferring  
20 with our client, we set a deposition for what appeared to be  
21 the least conflicting date of the dates he -- there was some  
22 conflict with all of them. We picked the one that appeared  
23 to have the least conflict, sent the notice of deposition  
24 with the intent of then having Mr. Shannon to respond and  
25 being able to work out hopefully someday.

1           He did respond on the 11th. I believe he sent the  
2   email around 9:50 a.m. I did not receive that email or did  
3   not see that email until about 1:24. I know that because I  
4   forwarded it at that time. And he offered a one- to two-  
5   hour window on that Sunday for a remote deposition. I was  
6   unavailable on that Sunday. I began trying to find someone  
7   to either cover that time or to reschedule on our behalf. I  
8   did not get a chance to get back to him. At 3:43, I  
9   believe, he filed a motion which was then granted.

10           So there was no -- he mentioned a motion for  
11   protection in his email, but with no deadline, did not say  
12   when he would be filing or deadline for response. So we  
13   don't feel that the fees are appropriate in this situation.  
14   We did not -- we did not disagree with withdrawing that  
15   original. We were trying to get the Sunday deposition time  
16   covered or decide whether we even wanted to take a  
17   deposition one to two hours remotely on a Sunday. So we  
18   just don't feel that the fees are appropriate in this case.  
19   This was just a matter of he sent the email, we were working  
20   on responding to that email and he filed a motion for  
21   protection within just a few hours.

22           THE COURT: All right. So do you want to present  
23   any evidence at this point in time other than argument?

24           MR. SMITH: The evidence are in the record, Your  
25   Honor. If you look, I believe it's the email string are

1 467-16 and 467-17 are those emails that I referenced, and  
2 then the 467-15 would be the schedule, the original email he  
3 sent regarding the schedule for that week.

4 THE COURT: All right. So do you have any  
5 objection, Mr. Shannon, to me admitting those into the  
6 record, 467-16, 17 and 15?

7 MR. SHANNON: No, Your Honor.

8 THE COURT: All right. Then I'll admit those as  
9 well.

10 (Trial Exhibits 467-15 - 467-17 entered into  
11 evidence)

12 THE COURT: Mr. Smith, anything else?

13 MR. SMITH: No sir, other than just looking at the  
14 timing, as you will see from those emails, we clearly  
15 believe that ten hours is excessive for the motion that was  
16 filed. Obviously that's what he's represented. We feel  
17 like ten hours -- I believe there's 15 hours from the time  
18 we sent this in total time from the time this began until  
19 the time the motion was filed. And the claim is that there  
20 were ten of those 15 hours spent drafting this motion, if  
21 you look at 467 itself. This is not a very detailed or  
22 complicated motion. We just feel that the ten hours is  
23 excessive, Your Honor, and I believe that'd be all.

24 THE COURT: All right. Thank you.

25 Mr. Shannon, I'll let you close.

1           MR. SHANNON: Thank you, Your Honor. I suppose it  
2 seems like the objection is to the reasonableness of the  
3 fees. That's what I hear. As detailed in the declaration,  
4 it wasn't -- it was actually 8.1 hours spent from the motion  
5 and it was not all spent drafting the motion. Of course, we  
6 had to -- as detailed in the declaration, I had to  
7 communicate with the trustee, ask if there was an  
8 alternative time. And also, I'll just point out in this  
9 case, normally I do not think this amount of time would have  
10 been reasonable. I think you have to consider this  
11 particular case and there have been appeals that, at least  
12 from the trustee's perspective, are not well-grounded. And  
13 we wanted to establish a definitive record of what happened  
14 so that if there is any kind of appeal based on the  
15 inability to take the trustee's deposition, that it is clear  
16 what happened.

17           I'll point out also, Your Honor, again that the  
18 trustee had made himself available. He made himself  
19 available to me on June 6th when the deposition was  
20 originally scheduled. The trustee did not agree to  
21 reschedule it. It was unilaterally canceled by 2425 WL.  
22 And I think all of that was important information for the  
23 court to have and to be in the record. And that was the  
24 reason for the amount of time. Again, it was 8.1 hours  
25 between communicating with the trustee, communicating with

1 counsel for 2425 WL, and then 2.5 hours preparing the  
2 declaration and the exhibits that are now admitted into the  
3 record.

4           Again, just under the circumstances of this  
5 particular case and the importance of actually obtaining the  
6 protective order, that was all necessary and reasonable,  
7 Judge. Again, the trustee, we had essentially two days to  
8 obtain the protective order. I think if there was more  
9 time, it might have made sense to file a very brief motion  
10 with just pointing out the obvious, that the trustee said he  
11 was unavailable and the deposition was noticed in two days.  
12 And that might have been enough, but it might have also  
13 required a hearing.

14           So under those circumstances, Judge, we submit  
15 that those fees are reasonable and should be awarded, and  
16 that's essentially our argument, Judge.

17           THE COURT: All right. Thank you. So I'll take  
18 the motion of the trustee for protective order, Number 467,  
19 based on the evidence, under advisement, and we'll move on  
20 to the next matter, which is probably more pressing.

21           All right. Let's call now the motion to permit  
22 credit bidding filed by 2425 WL, LLC. Who's going to speak  
23 on behalf of 2425 WL?

24           MR. BURKS: My name is Gray Burks, G-R-A-Y, B-U-R-  
25 K-S, Your Honor.

1           THE COURT: Thank you, Mr. Burks. Who's going to  
2 speak for NBK?

3           MR. TROOP: Your Honor, Andrew Troop. I'm told I  
4 don't speak loud enough. Let me try again. Your Honor, Mr.  
5 Troop, from -- Andrew Troop (indiscernible) from Pillsbury  
6 Winthrop Shaw Pittman, on behalf of National Bank of Kuwait.  
7 Your Honor, if you take openings or closings, I'll be doing  
8 that. Witnesses, Mr. Fitzmaurice will take.

9           THE COURT: All right. Thank you.

10          All right. Mr. Burks, opening statement. Go  
11 ahead.

12          MR. BURKS: Yes, Your Honor. Before Mr. Troop and  
13 I start speaking on opening statements, Your Honor, there is  
14 a very pressing matter that I personally have great concern  
15 over. I'm asking Mr. Baker to put up on the record the  
16 medical records of medical doctor statements regarding Mr.  
17 Ali Choudhri, who is a necessary party and an individual. I  
18 have read the motion for continuance. I've written the  
19 order denying that motion for continuance. I've also spoken  
20 with Mr. Choudhri on Thursday, Friday, Saturday and Sunday,  
21 personally on Thursday and Friday; that is, in person. I  
22 spoke to Mr. Shannon and told him that I was extremely  
23 concerned about the physical condition of Mr. Choudhri. I  
24 don't know if it got worse after June 4th or 5th or 6th or  
25 after the motion was filed or not. The man's left side of

1 his body, his face is completely paralyzed. The right side  
2 of his face is puffed up because the left side has dropped.  
3 He has a weeping eye. His gait is changed. He has doctor's  
4 letters, which I'm asking Mr. Baker to put up, stating that  
5 he should be stress-free for four weeks. I don't want to be  
6 the person responsible for another stroke or a heart attack.

7 I discussed with Mr. R.J. Shannon that whatever  
8 the pressing matters of the motion, obviously the motion for  
9 to preclude credit bidding is tied in with confirmation.  
10 It's almost impossible to separate the plan out from that  
11 motion. However, two weeks -- I mean, I'll be available on  
12 any of those dates. Two weeks is up in -- well, the four  
13 weeks is up in two weeks. I do not understand, and I  
14 personally don't -- I'm not going to abandon my client at  
15 this hearing. But I personally do not want to be part of a  
16 hearing where we are violating doctor's orders and putting  
17 this man under extreme stress, Your Honor. And I understand  
18 the motion. I understand why you denied it. But as we  
19 stand here today --

20 THE COURT: Mr. Burks, I've already ruled on the  
21 motion for continuance. If you're making another oral  
22 motion, okay --

23 MR. BURKS: I am.

24 THE COURT: All right. Then I'll let everyone  
25 respond to that. You've made it. I think you've made your



1 argument.

2 Let me now go to Mr. Troop or Mr. Fitzmaurice, and  
3 you can respond to that.

4 Mr. Burks, I will tell you, part of the reason  
5 that I basically denied the motion was because I had a  
6 discussion with Judge Isgur about what happened at the  
7 hearing after the motion was filed.

8 MR. BURKS: Yes.

9 THE COURT: So I didn't do it callously. I  
10 basically talked to him. He said that he was there, that he  
11 participated, that he appeared able to participate and he  
12 didn't participate -- didn't at that point in time appear to  
13 have any sort of problems at all. Okay. So that's the  
14 reason for the motion being denied. If the order isn't  
15 clear in that regard, it is.

16 MR. BURKS: It is.

17 THE COURT: All right. So that's where we are  
18 currently. I take your oral motion. I'll let Mr. Troop or  
19 Mr. Fitzmaurice respond to it. All right. Thank you.

20 MR. BURKS: Thank you, Judge. And I am talking  
21 about where we are now, not where we were.

22 THE COURT: I understand. I understand. But I  
23 mean, here's also the problem. Okay.

24 MR. BURKS: Yes.

25 THE COURT: You're doing this at 9:15 for a

1     hearing that was set at 9:00. Is there some reason you  
2     couldn't have put everyone else on notice that you were  
3     going to ask for continuance today, and did you give anyone  
4     else notice?

5             MR. BURKS: On Friday afternoon at approximately  
6     2:00 I had a conversation with Mr. R.J. Shannon. He told me  
7     he --

8             THE COURT: I don't think the party to this motion  
9     is R.J. Shannon. I think it's the National Bank of Kuwait.  
10    Did you have any discussions with them?

11            MR. BURKS: No, Your Honor. I did not.

12            THE COURT: All right. All right. Then I'll ask  
13    Mr. Troop or Mr. Fitzmaurice to respond to that.

14            MR. TROOP: Your Honor, Andrew Troop, again for  
15    National Bank of Kuwait. We, of course, like the court, do  
16    not intend to be callous in our response. I am, however,  
17    surprised that the first we're hearing this and these new  
18    circumstances are today, as you said, at 9:15.

19            The need to move this case forward has been well  
20    known for a long time. There is an auction schedule for  
21    tomorrow. There are five, four attorneys from Pillsbury  
22    here. Three of us traveled, two of us on Saturday, to be  
23    here prepared for today's hearing. The representative of  
24    the bank also traveled yesterday to be here for today's  
25    hearing.

1           And the challenge here, Your Honor, is that, as we  
2   laid out in our papers, is not that Mr. Choudhri is reported  
3   to be unable to participate. The challenge here is that if  
4   the auction and the confirmation hearing on NBK's plan is  
5   tied to Mr. Choudhri's health, then there's no telling how  
6   many times at the last minute this issue will rise and have  
7   to be addressed by us, meaning you and me, in an awkward and  
8   uncomfortable circumstance.

9           The alternatives to proceeding are not good for  
10   the estate. The estate, Your Honor, you'll hear in  
11   testimony today, so I'll just proffer it now, and please  
12   accept it as true. You will hear that the building is in  
13   bad shape. It is requiring significant maintenance and  
14   expense. And the party expending those funds is NBK. And  
15   getting the property out of the hands of the estate and  
16   proceeding with what is a fair plan, Your Honor, NBK's plan,  
17   is in the best interest of the estate, which I think, under  
18   the circumstances, needs to take precedence, though I say  
19   that with a heavy heart because my -- I'm always sympathetic  
20   to anyone's individual plights.

21           But this is a corporate debtor and this is a  
22   corporate objector and this is -- Mr. Choudhri's health and  
23   his challenges, at least since June 2nd, have also been  
24   related to them. And so, Your Honor, I would ask humbly,  
25   because I don't know how else to say it, that the request

1 for a continuance be denied. Thank you.

2 THE COURT: Thank you.

3 Mr. Burks, you can come to the podium.

4 MR. BURKS: May I ask Mr. Choudhri to come step  
5 forward, Your Honor?

6 THE COURT: No.

7 MR. BURKS: All right.

8 THE COURT: No. I mean, and here's the problem,  
9 Mr. Burks. You don't come to a hearing at 9:15 that's set  
10 at 9:00 and surprise parties who have traveled and done  
11 whatever they need to do to get here to be ready to  
12 prosecute or defend your motion at the last minute and ask  
13 me to continue the case. I'm going to deny your motion.  
14 All right.

15 MR. BURKS: Yes, Your Honor.

16 THE COURT: Thank you. So you may go ahead and  
17 make your opening statement.

18 MR. BURKS: Yes, Your Honor. One moment.

19 THE COURT: Thank you.

20 MR. BURKS: We start with the concept that credit  
21 bidding is a familiar tool used in Chapter 11 bankruptcy.  
22 We also start with -- we also continue with the concept that  
23 it is not an absolute that the court has discretion on the  
24 equities and on the case to -- a case-by-case basis to  
25 preclude the use of the credit bid.

1           Let's look at what the court has said all along in  
2       various procedural orders. The most important thing that we  
3       have to do with this auction in this case is to market test  
4       the value of this property by an auction to maximize the  
5       return for all creditors and possibly to the debtor.

6           There are circumstances where a credit bid simply  
7       does not promote maximizing or testing the auction -- the  
8       value of the property, but actually retards it. And that is  
9       the case here for at least three separate reasons, Your  
10      Honor.

11          The first one is the proof of claim filed at  
12      Document Number 14 for \$67,157,000 by NBK, plus the proof of  
13      claim filed at Docket Number 13 for tax liens in the amount  
14      of \$3,864,455 by NBK totals over \$71 million, Judge. Nobody  
15      thinks that the cash value at the auction is \$71 million or  
16      close to it. In other words, the cash bids that are subject  
17      to the auction are moot to the extent NBK chooses to simply  
18      credit bid over any cash bid. There won't be any cash out  
19      of pocket.

20          The second problem here, this is not what I would  
21      call a pure credit bid, Judge. So a pure credit bid is a  
22      bid where they are bidding in against their proof of claim.  
23      That's not what the plan provides and that's not what's  
24      happening here. This one has conditions, it has feelers, it  
25      has strings. The credit bid is together with -- it's

1 packaged with NBK doing two other things, paying cash, and  
2 I'm using a number that may be wrong. It's, for example,  
3 about \$275,000 into the estate and promising to cover  
4 administrative expenses. Now if they can't credit bid, that  
5 money is not required to be paid. In other words, they're  
6 saying we want to tie in the credit bid with a release of  
7 all claims against NBK. So they're credit bidding against  
8 their proof of claim to buy out claims. I don't know if  
9 that's a credit bid. It's almost a Rule 90. It's almost a  
10 combination credit bid with motion to settle and compromise.

11 The third problem here, and not the most pressing  
12 of all problems, the third problem is that there are  
13 objections to the allowable amount of this claim unresolved.  
14 We don't know what this claim is for two reasons. One, the  
15 pure objection, and two, three lawsuits that are pending  
16 against NBK which need to be resolved in order to know, for  
17 purpose of this motion, not what their allowable claim is,  
18 but what is the ceiling on the credit bid, and it might be  
19 zero.

20 There's an equitable subjugation action. There's  
21 a claim that you'll be hearing about in the confirmation  
22 process regarding whether or not NBK is subject to  
23 liability. And there's a serious claim that you'll be  
24 hearing from both sides on a settlement agreement and on a  
25 subsequent offer, an intender of cash to buy out NBK's note.

1     There's a serious argument the NBK is not the party entitled  
2     to exercise any rights on the note, let alone to credit bid.

3             So the case law that Mr. Sather has filed in his  
4     brief tells you what should be happening here. It says that  
5     in circumstances like this, and, Judge, those cases in which  
6     they held that the credit bid should be denied and held that  
7     the bank can simply make a cash bid, and then if it wins its  
8     claim actions or disputes, get that cash back, well, those  
9     cases address problems far more simpler than here.

10            We have three major problems that call into doubt  
11     whether or not this creditor is even entitled to credit bid  
12     at all. And so if it was a pure credit bid, that would be  
13     one thing. If there was a claim where we knew what the  
14     amount of the claim was, that would be one thing. If there  
15     was a situation where the only proponent of the plan, the  
16     proponent of the plan was the only accepting class and no  
17     one else accepted this plan, that would be another thing.  
18     But literally you have an opponent of a plan saying, Judge,  
19     innocuously, let me credit bid and resolve all the disputes  
20     against me, settle all the claims, basically selling all the  
21     claims for zero, and let me bid zero cash and have the  
22     opportunity up to \$71 million to trump anyone who bids cash.  
23     Thank you, Your Honor.

24            THE COURT: Thank you.

25            Mr. Troop?

1           MR. TROOP: Thank you, Your Honor. Andrew Troop,  
2   again, from Pillsbury Winthrop Shaw Pittman, on behalf of  
3   the National Bank of Kuwait. Let me take the easy one  
4   first. The credit bid (indiscernible) it's not the  
5   (indiscernible) is not tax hunting.

6           Secondly, Your Honor, let me take this in the  
7   reverse order (indiscernible) issues are argued. The first,  
8   Your Honor, is that there are objections or challenges to  
9   NBK's claims. Those objections are for the reasons that we  
10   identified (indiscernible) conduct before August of 2022 has  
11   been released. Conduct since August of '22 has been  
12   investigated by the trustee. Under the final cash  
13   collateral order, the trustee was to bring claims against  
14   (indiscernible) validity, priority or security by the end of  
15   the challenge period. That period has ended. No challenges  
16   were brought. When that happened, under the final cash  
17   collateral order, everyone was bound by the stipulations in  
18   the final cash collateral order.

19           But, Your Honor, you will hear, if there's  
20   testimony there, (indiscernible) testimony today in  
21   connection with the credit bid and the confirmation hearing  
22   that that investigation that was described took place. And  
23   in fact, the resolution, there were no claims asserted  
24   because the trustee concluded they were (indiscernible).  
25   And, Your Honor, because I can't help myself, on the offer



1 question, look very quickly at this timeline. There was a  
2 foreclosure sale schedule for July 5, 2023.

3 At the end of June of 2023, the debtors' lawyers  
4 at Akin Gump emailed and said, could we have documents to  
5 close in accordance with the settlement agreement, which the  
6 state court had effectively elongated until for 210 days,  
7 and -- or let's say even to July 3rd, for the sake of  
8 argument, so we can have them and we could close. And we  
9 said, okay, here's the -- here are the documents. Here's  
10 the number. And July 3rd came and went and nobody  
11 performed. The debtor didn't perform. How, how, how can a  
12 letter which says, here's what you need for the closing on  
13 July 3rd be an offer which is purportedly accepted in April  
14 2024 through a letter that says we'll perform in accordance  
15 with that prior settlement agreement and we tender payment.

16 Your Honor, I think everyone will stipulate that  
17 payment was never made. Even if a tender could solve the  
18 problem, there's been no tender. A tender is when you walk  
19 up and say, here's my money. And there was no money, right?

20 What was the second one? Your Honor, I'll go on  
21 generally to the concept of credit bidding here. The case  
22 law is clear that people, even when there are challenges to  
23 claims, credit bidding is still allowed. There's no dispute  
24 that the money was loaned. There's no dispute it wasn't  
25 paid back. And there's no dispute that the security

1 interest, the deed of trust, was properly perfected. No one  
2 sought to avoid that. No one sought to avoid that. And  
3 they can't, Your Honor. They can't. Even without the final  
4 cash collateral order, they can't. That's a resolved issue  
5 here.

6           So the question then becomes whether this alleged  
7 -- I guess I'll describe it as an intercreditor dispute over  
8 who owns the loan (indiscernible) remember the reasons I  
9 said I think it's there's no there there -- should stand in  
10 the way of credit bidding, where I note the estate's  
11 representative is not objecting to credit bidding. And it  
12 seems to me that what they're saying is, well, don't credit  
13 bid because make them pay cash, and then they can get it  
14 back. But National Kuwait -- National Bank of Kuwait is  
15 good for a money judgment. If they've got independent, non-  
16 derivative claims that they can state that would survive a  
17 motion to dismiss, summary judgment or a trial, there's a  
18 defendant who can pay (indiscernible).

19           So the question is whether the auction should be  
20 put -- thrown into chaos, effectively, which goes back,  
21 unfortunately, to the arguments we had just before, which  
22 is, what is the benefit of delay or (indiscernible) delay  
23 on this estate, and there is none.

24           Finally, Your Honor, the issue with regard to the  
25 plan and the sale being connected, everyone knows that.

1     There's another issue with deception, lack of clarity, lack  
2     of disclosure. The trustee set a (indiscernible) auction  
3     price, calculating what the benefit, how the cash bid would  
4     provide the same benefit to the estate as a credit bid, and  
5     the price for NBK stepping out, like it is often for a  
6     stalking horse bidder, is a release. It's a release from  
7     the estate. It's embedded into the plan. The plan does not  
8     release anything but estate claims, and for the reasons  
9     already stated, pursuant to the final cash collateral order,  
10    everyone's already bound effectively by the results of that  
11    release, except people who have independent, non-derivative  
12    claims.

13                 With regard to the chilling nature of the auction,  
14    Your Honor, I can't think of a case where credit bidding has  
15    been disallowed, where the conduct that gave rise to the  
16    disallowance of credit bidding did not involve some kind of  
17    inappropriate, improper interference with the bid and  
18    auction process. That's the primary issue that  
19    (indiscernible) looking at in these questions. And, Your  
20    Honor, we have done -- we did what a -- we're not a  
21    fiduciary (indiscernible) right? But we put a sort of a  
22    fiduciary hat on and said, how do you get this accomplished  
23    in a way that gives the court and creditors confidence that  
24    the process is a fair one. And that was to -- while they're  
25    connected, it was to separate the responsibility and

1 decision-making with regard to the auction process and the  
2 auction itself from NBK. NBK acted as the bidder, stalking  
3 horse bidder. Did it make demands or conditions? Of  
4 course. You'll hear that they were pushed back on by the  
5 trust bidding. You can look and, if we need to, Your Honor,  
6 we'll give you the draft bidding procedures that we  
7 presented at the trustee, and we'll give you the redline to  
8 show what came back as a result of the trustee doing his  
9 job.

10 When you put all of this together, Your Honor,  
11 there is no basis to disallow credit bidding. The claims  
12 are -- the claims that are asserted are implausible. They  
13 are independent of the estate. In fact, Your Honor, before  
14 I forget, remember two weeks ago, I think it was, we took a  
15 case out of state court and brought it here, and Mr.  
16 Choudhri filed an emergency motion to remand. And what was  
17 his argument? His argument was that the dispute over who  
18 owns the tax lien and who owns the loan is not a core  
19 proceeding. It's related to jurisdiction at best. And the  
20 court should let the state court decide that issue.

21 Now for a variety of reasons, we may disagree with  
22 that. But they're estopped from arguing differently.  
23 They're estopped from arguing differently. That means that  
24 this dispute, the whole basis for their claims, they say, is  
25 a dispute you shouldn't resolve. If you shouldn't resolve

1     it, how can it be the basis to stop credit bidding in a  
2     matter before you? How can it not be that they acknowledge  
3     that the remedy, if they have one, is damages? How could it  
4     not be that the process that was undertaken by the trustee,  
5     which garnered lots of interest, we don't know what the  
6     results are. Maybe not lots of bids, who knows? But lots  
7     of interest to create a market isn't the one to go forward,  
8     particularly where the credit bidding is clearly known to  
9     everybody (indiscernible).

10                 So Your Honor, I ask that you deny the motion and  
11     that the auction go forward with (indiscernible) credit  
12     bidding.

13                 THE COURT: All right. Mr. Burks, you can call  
14     your witness.

15                 MR. SHANNON: Your Honor, may I address the court  
16     real quickly? Your Honor?

17                 THE COURT: Bear with me. Okay. I have a motion.  
18     I have a response. I have a response deadline that passed  
19     and no one else filed any sort of responses. I only intend  
20     to hear the people who actually filed a response.

21                 MR. SHANNON: Yes, Your Honor. It has to do with  
22     one of the exhibits that was inadvertently provided in  
23     discovery that's attorney-client privileged. We can address  
24     it if it comes up.

25                 THE COURT: We'll address it if and when it comes

1 up.

2 MR. SHANNON: All right.

3 THE COURT: Thank you.

4 All right. Mr. Burks, you may call your witness.

5 MR. BURKS: Yes, Your Honor. At this point, Your  
6 Honor --

7 THE COURT: Please sit down, sir.

8 MR. CHOUDHURI: I want to make a record, Your  
9 Honor.

10 THE COURT: No. I would like you to sit down,  
11 please. Thank you.

12 MR. CHOUDHURI: Because --

13 THE COURT: I would like you to sit down, please.  
14 Thank you.

15 Go ahead Mr. Burks. You may call your witness.

16 If you're called as a witness by somebody, Mr.  
17 Choudhri, you may speak at that point in time. I don't have  
18 any problem with that. But --

19 MR. CHOUDHURI: I'm a movant on this motion, Your  
20 Honor. That's why --

21 THE COURT: You're not. You didn't file a  
22 response. There's no response in opposition. You didn't  
23 file anything.

24 MR. SATHER: He was at co-movement, Your Honor.

25 MR. CHOUDHURI: Yes, Your Honor.

1 MR. TROOP: Your Honor, he was a co-movant.

2 THE COURT: He was a co-movant? Okay. Come  
3 forward.

4 MR. CHOUDHRI: Thank you, Your Honor. First of  
5 all, Your Honor, I'm sorry I was a little late. I just  
6 wanted to clarify just one thing for a minute, Your Honor.  
7 So on June the 2nd, I had a stroke on Sunday and I didn't  
8 think it was.

9 THE COURT: Mr. Choudhri, I've already heard the  
10 motion for continuance. If you want to make an opening  
11 statement on the motion, I'm happy to hear it.

12 MR. CHOUDHURI: Yes, Your Honor.

13 THE COURT: But this is not let's throw it to the  
14 court and see what sticks. If you want to make an opening  
15 statement on the motion to prohibit credit bidding, please  
16 do.

17 MR. CHOUDHRI: Yes, Your Honor. I just wanted to  
18 mention one thing about that, something that you had  
19 mentioned earlier. When I went to the doctor on June the  
20 7th, I did call into a hearing --

21 THE COURT: Again, I don't want to hear anything  
22 relative to the motion to continue. If you want to talk  
23 about the motion to prohibit credit bidding, which was  
24 filed, I'm happy to hear it.

25 MR. CHOUDHRI: Yes, Your Honor. Okay. Thank you.

1 First of all, Your Honor, I wanted to just mention the key  
2 here is transparency and how and why we're here and how we  
3 got here.

4 The acts of NBK have been consistent where leasing  
5 efforts have been awarded. There's been offers to sell the  
6 property and NBK is not. In fact, Your Honor, the question  
7 is -- so NBK takes a position that the settlement agreement  
8 has not been rescinded. We have taken the position that --  
9 let me back up a little bit. Sorry.

10 NBK is the reason the debtor is in bankruptcy. In  
11 2020, the building by NBK was appraised for over \$100  
12 million, and the largest tenant went bankrupt, Stage Stores.  
13 And when Stage Stores went bankrupt, there was another  
14 tenant that had signed a lease for three floors, Saunders.  
15 And they didn't move in, mainly, I believe, due to COVID.  
16 But had they been in before COVID, the requirements in the  
17 loan documents by the Bank of Kuwait required them on  
18 5.27(c) that they shall provide SNDAs.

19 Your Honor, I went back. I'm a little slow, and I  
20 apologize, so bear with me. But I went back and I read the  
21 January 31 transcript when you asked me, where are they  
22 required to do SNDAs? Show me. And I said, the settlement  
23 agreement. And at that time, the settlement agreement was,  
24 I believe, confidential. And it's been filed, I believe, by  
25 the trustee and the bank. So I don't believe it's



1 confidential anymore. The settlement agreement supplanted  
2 the loan agreement. The settlement agreement also compelled  
3 them to provide SNDAs and allow the debtor to lease up the  
4 building. The settlement agreement was entered on August  
5 2022, a week before the key people in Kuwait were compelled  
6 to testify. And Mona Dajani, the general counsel, because  
7 what the Bank of Kuwait did in July of 2022 is they filed a  
8 false SAR before they made the loan. They structured the  
9 loan where it was a sale.

10 This goes back to what also happened, what is  
11 happening with me across the board, Your Honor. There's a  
12 gentleman named Osama Abdullatif. He has filed lis pendens  
13 on 90 of my properties. First, what he did is he recruited  
14 my ex-wife in 2015, even though I was divorced in 2012 and  
15 had her file lis pendens, and all of these entities were  
16 defendants, including the creditor here. 2425 WL was a  
17 defendant, and this property had a lis pendens on it. And  
18 that case ended in 2019. The court found that I was  
19 divorced, or the court had no jurisdiction because the court  
20 earlier found I was divorced in 2012. So this was  
21 asymmetric warfare and barratry, sponsored litigation by  
22 Osama Abdullatif.

23 So in 2018, when the loan was made by the Bank of  
24 Kuwait, they wanted the property to be transferred from 2425  
25 WL to a new created entity, Galleria. All the funds from

1 the buyer -- there's no funds that came from the buyer on  
2 the closing statement that Mona Dajani, representing the  
3 Bank of Kuwait, approved, the closing statement. The deal  
4 was structured the way it was. There's evidence of that.  
5 That's what our case -- they structured the deal the way  
6 they did.

7 The loan documents provided that the bank shall  
8 approve leases, but not unreasonably withhold approval.  
9 Fast-forward, Sonder shows up. Sonder wants to sign a  
10 lease. Now in 2019, the court, the family court in Harris  
11 County found that I was divorced as of 2012, and the court  
12 had no jurisdiction. So all of the lis pendens that were  
13 filed by Osama through the sponsored litigation were void  
14 and dissolved. And that was one of the concerns that Bank  
15 of Kuwait had and Mona Dajani had, that she could -- the ex  
16 could file more lis pendens, and that's why they structured  
17 the deal.

18 And at that point, we moved forward. In 2020 --  
19 in 2019, Sonder came to me through the City of Houston, the  
20 mayor's office. They were looking at expanding their short-  
21 term rental. They go and -- they're like Airbnb, but  
22 they're standardized. It's as if you go to a Marriott  
23 versus like an Airbnb is a one-off independent. You get  
24 independent reviews. And Sonder, one of their seed  
25 investors is Bezos Expeditions. So it was a startup, and

1 they came to me and I met with them. They met with a lot of  
2 developers in town. They ended up signing five leases with  
3 varying companies, Your Honor. And once they did that, we  
4 informed the Bank of Kuwait, Mr. Carter, Michael Carter.

5 And one thing I want to mention, Your Honor,  
6 there's an internal loan memo that was drafted and submitted  
7 by the Bank of Kuwait in March of 2018 when they laid out  
8 this whole thing about my ownership, Jetall being successful  
9 in leasing the building, myself owning it and continuing to  
10 own it after the loan closed. And after Stage filed  
11 bankruptcy, I attempted to acquire Stage when it was in  
12 Judge Jones' court. I was not successful. But the company  
13 failed, 13,000 people lost their jobs. They were our  
14 largest tenant. And there's an email with Michael Carter  
15 where he emails other people at the Bank of Kuwait. Again,  
16 all decisions were made in Kuwait and it says our effective  
17 equity counter, Ali Choudhri is trying to buy Stage Stores.  
18 If they do, they'll be successful in saving the tenant.  
19 This is in 2020.

20 Fast-forward with Sonder not moving in. Some of  
21 the factors of Sonder not moving in, there were delays.  
22 Obviously, Sonder had their own excuses, and I believe it's  
23 mainly COVID. The Bank of Kuwait's position has been all  
24 leases have to be approved in writing and cannot be  
25 unreasonably withheld. They asked the (indiscernible) to

1 sign those leases for the three floors for 15 years. And  
2 what that does, Your Honor, it was forethinking. It would  
3 convert three floors of the building to apartment hotel.  
4 It's truly live, work and play, mixed use. And in Feb.  
5 2020, permits were approved by the City of Houston.

6 But in January 2019, when the leases were  
7 submitted to Mr. Carter, he and Mr. Marwan and the people  
8 that I spoke to in Kuwait were anxious for us to sign those  
9 leases. We did not get those approvals in writing. They  
10 asked us to get them signed. Those leases were signed.  
11 Subsequently, a few months later, when the TIs, the tenant  
12 improvements and leasing commissions were sought, Bank of  
13 Kuwait took a position that those leases are null and void  
14 because you never got them in writing. They sent initial  
15 default letters. That's what the default started. Mr.  
16 Carter, in his deposition, could confirm that and testify to  
17 that. So the bank says leases approved. Then they say, you  
18 didn't get it right. It's not approved. It's null and  
19 void. And then they're emailing the appraiser, asking him  
20 to include the leases in their report.

21 Fast-forward, COVID. So Feb. 2020, the permits  
22 get approved. March 2020, COVID happens. May 2020, Stage  
23 Stores files bankruptcy. The building is bleeding. It's  
24 losing money. Lots of things are going on at that time.  
25 It's very difficult. And the bank -- at that point, we

1     tried our best to lease up the building, and we got some  
2     leases. We got a tour with Microsoft. We had an interest  
3     with Bechtel. We had lots of interest and proposals, actual  
4     proposals. And this is a pattern that's been repeating  
5     itself. We got the proposals. We presented them to the  
6     bank. They wouldn't approve them.

7             Finally, we threw up our hands and said, we're  
8     going to sell the building. We got an offer. We got a  
9     couple of offers. Holland & Knight sent the offer to the  
10    Bank of Kuwait, to Mona Dajani at Pillsbury. The offers,  
11    there's an offer there for \$85 million. There's an offer  
12    there. And these are typical offers that require typical  
13    due diligence so you're not depressing or suppressing the  
14    market. It's not a value destroying auction or process  
15    where somebody has three weeks of marketing and has to pay  
16    10 percent nonrefundable and close immediately. You're  
17    going to take 80 percent of the buyer pool away.

18            Subsequent to that, Your Honor, offers were made  
19    to the Bank of Kuwait. Mr. Carter in his deposition on June  
20    the 5th testified that they received no offers. They didn't  
21    receive the \$85 million offer, when it was in fact received.  
22    In fact, it was also that Holland & Knight letter and the  
23    control and the documents were also sent to R.J. Shannon in  
24    2021. Subsequent to that -- when he was with the firm  
25    Parkins Lee & Rubio, which was Kyung Lee, R.J. Shannon and

1 Lenny Parkins.

2 Subsequent to that, Your Honor, the bank decided  
3 instead of responding to the offer and the leases, to help  
4 the borrower pay the bank off, it would be a good thing.  
5 The loan documents also state in the loan documents that the  
6 borrower has to get approval of the bank before it can enter  
7 into a sales contract. Obviously we were very hesitant to  
8 do that without getting approval because of the Sonder  
9 default that they claimed after they approved the lease of  
10 Sonder, then they claimed it was not approved.

11 Interestingly, after Sonder didn't move in and in  
12 the state court litigation, in their Interrogatory Number 6,  
13 they state we approved Sonder. Well, in the deposition they  
14 approved, they state they didn't approve them. Well, it's  
15 very convenient. They approve them or they don't. They've  
16 also stated they've never approved a single lease, except  
17 one lease which is Sonder. And I can guarantee, Your Honor,  
18 there have been many, many leases submitted.

19 Mr. Carter also testifies that he doesn't know  
20 Vaxanix. If you remember, there was a gentleman from  
21 Vaxanix, which is the Dole Food Company, who wanted to sign  
22 the lease for 13,000 square feet and take up to two floors,  
23 but start with 13,000 feet. NBK says they didn't receive  
24 that lease either. That lease was submitted to the trustee.  
25 It was submitted to the court. The witness was submitted to

1 the court. I correct myself. The lease was submitted to  
2 the trustee in Feb., in March. Mr. Carter testified that he  
3 didn't receive that lease either, that he hasn't received  
4 any leases.

5 In September of 2021, in August of 2020 -- I'm  
6 sorry. August of 2021, Holland & Knight, our counsel, my  
7 counsel, the debtor's counsel, my counsel sends a contract  
8 to the Bank of Kuwait to approve to sell the building for  
9 \$85 million that would clear their debt. Instead of  
10 responding to it, they posted the property for foreclosure  
11 before accelerating the loan. The debtor goes to court,  
12 gets a TRO. Mediation is compelled. They don't come to  
13 mediation. The TI goes forward. Judge Weems grants the TI.  
14 Nobody from Kuwait shows up. Judge Weems grants the TI in  
15 March of 2022 and trial is set for September 2022.

16 In June of 2022, the bank amends their complaint,  
17 adds fraud claims. When you're -- it seems like a pattern.  
18 When you question or someone retaliates back.

19 MR. TROOP: That's the removed adversary that's  
20 (indiscernible) state court.

21 MR. CHOUDHRI: In June of 2022, the Bank of Kuwait  
22 amends their complaint, counterclaims and says that the  
23 debtor committed fraud. We asked for discovery. They non-  
24 suit. Their amended complaint said that discovery is not  
25 necessary. We go forward to trial. Depos are compelled

1     Mona Dajani because claims they made were not truthful.  
2     Representations they made, even on an SAR, were false. And  
3     in fact, they asked Judge Weems to terminate their  
4     testimony, which would be an obstruction of justice. And  
5     Judge Weems denied doing that.

6             Judge Weems compelled the depositions of the key  
7     people at the Bank of Kuwait. The Bank of Kuwait entered  
8     into a settlement agreement. I don't believe they entered  
9     into that settlement agreement in good faith, Your Honor,  
10    and I don't believe they're here in good faith today. The  
11    settlement agreement got entered. Tax liens for several  
12    million dollars were assigned over to them. And there's no  
13    provision in that settlement agreement that says they get to  
14    keep them. They have to give them back.

15            The settlement agreement also says the venue, the  
16    reason it was filed in the 129th, that case, Your Honor, it  
17    says, by agreement, the venue is Harris County district  
18    court. We'd be happy to come to Your Honor, but that's what  
19    we followed, and that's what the settlement says, which  
20    they've now filed. And so when the settlement agreement was  
21    done, Your Honor, in August 2022, at this point, the  
22    building is suffering. It has no occupancy. I've been  
23    funding this, bringing funds, as you can understand. You  
24    have a 300,000 square foot building. It's hundreds of  
25    thousands of dollars every month just to keep things going



1 while they're tying our hands and precluding us from leasing  
2 out. The reason Judge Weems entered that TI, because if  
3 some testimony and evidence came out, Your Honor, where  
4 their plan was to remove me, the equity owner, and bring in  
5 their other people in New York that they had.

6 NBK is acting like banks in the '80s where laws  
7 were created and they want to hide discovery. They'll do  
8 whatever to hide and run from the discovery. And everything  
9 should be transparent, should be open, and it's transparent,  
10 and it hasn't been, Your Honor. I can vouch for that. When  
11 the Stage bankruptcy happened, Your Honor, at Document 70,  
12 Page 8 and 9, furniture, FF&E, Stage spent \$14 million on  
13 furniture for 200,000 square feet.

14 The background of the building, Your Honor, I  
15 bought the building in 2012 when Blue Cross was moving out.  
16 And I gutted it, renovated it, fixed it up, got it leased  
17 up, brought Stage in. In fact, their loan memo brags how  
18 great I did and all the assets they looked at and how  
19 successful I was. I've had my own challenges with this guy  
20 Osama, who's been attacking me on every front.

21 But when I got the building leased up, I got Bank  
22 of America to finance it. And then I was approached by NBK  
23 to refinance it with them, and that's the structure they  
24 set. We followed their structure. Their loan agreement  
25 says they cannot unreasonably withhold approval. They have

1 to act in good faith. And the provision is New York law  
2 where it's good faith in dealing. And they haven't done  
3 that.

4 They're going to do everything they can. They've  
5 given the trustee -- they've told the trustee, because I  
6 asked the trustee, what are the admins so we can come up  
7 with a proposal that's better. It's irrelevant because --  
8 in writing, Mr. Shannon says it's irrelevant because NBK is  
9 going to pay whatever it is, whatever it is, so they can  
10 create liquidating trust and keep attacking, and so they  
11 have an open check by the Bank of Kuwait. Instead of  
12 holding them accountable, hold everybody accountable, open  
13 the door for transparency, have a discovery master,  
14 whatever, because there's things that are being hidden, Your  
15 Honor.

16 Mr. Reese filed a deposition which earlier on they  
17 said, well, you were dilator in discovery. He filed a  
18 deposition, and it was quashed. Then they bullied him and  
19 said, hey, you can't do it, you're not the debtor. And that  
20 wasn't accurate. And so when you see the email, Your Honor,  
21 it will be astonishing. The evidence is overwhelming. The  
22 bad faith by the bank is overwhelming and it is -- and the  
23 reason Jerry Alexander, who's here in the courtroom, he  
24 handled the Bailey Tool case. And there's other large law  
25 firms that have agreed to take this case on against the Bank

1 of Kuwait on a full contingency for no cost.

2 Forget the litigation. We said, hey, we'll pay to  
3 buy those claims. All we want to do is settle. All we want  
4 to do is for them to honor what they said they were going to  
5 do. If they want to say the settlement isn't rescinded,  
6 well then their amount is not more than \$26 million. They  
7 can't have it both ways. We have QB -- and I'm all over the  
8 place and I'm sorry, Your Honor. Thanks for bearing with  
9 me.

10 It's just there's a malignment of reputation.  
11 There's a malignment of a narrative. There's always two  
12 sides to it. And my dad taught me -- pe passed away in 2012  
13 and I learned from him going to the RTC in the early '90s  
14 and I've been in and around real estate. I started young.  
15 But he taught me, if somebody says the dog ran away with  
16 your ear, don't run after the dog. Check your ear first.

17 And the thing that I've been saying  
18 (indiscernible) reading everything, Your Honor, and what Mr.  
19 Troop has stated on the record in different transcripts, and  
20 I have them all and I have what you, Your Honor, has said.  
21 And you read everything. You're very smart. The things  
22 that I've seen, Your Honor, there's so much  
23 misrepresentation to Your Honor. There has been fraud on  
24 this court and I'm not saying that lightly, Your Honor. And  
25 I will prove it. And if I have to bring a 60(b) motion, I

1 will, because I want -- I want the facts to come out, what's  
2 happening.

3 I want to go back to Stage. Stage filed  
4 bankruptcy. Non-debtor entity acquired the FF&E from  
5 bankruptcy court. There's 200,000 square feet of furniture  
6 in that building, Your Honor. And so the reason I thought  
7 it was a good idea to stage the space so when somebody walks  
8 in, they want to lease it. It's easier. But they've been  
9 handicapping me from leasing it. I have acquired several  
10 dozens of buildings successfully.

11 When they say money judgment -- by the way, Your  
12 Honor, I want to mention something. This is an I.M. Pei  
13 building. I.M. Pei is deceased. He's the architect that  
14 designed the pyramid in the Louvre. He's only done two  
15 buildings in Houston, the JPMorgan Tower and this building.  
16 This real estate is very, very unique. And what they want  
17 to do is suppress and depress the value and have a value  
18 damaging model.

19 Hilco -- let me go back to the FF&E. Hilco is  
20 representing to third parties and the public that the  
21 furniture is included in the sale. That's what they're  
22 representing. So these buyers that are out there are under  
23 the impression that all the furniture that's in the building  
24 that's not owned by the debtor is included in the sale. So  
25 trampling rights, left and right. Entities have rights,

1 people have rights and they can't just ignore those rights.

2 And that is going on here.

3 We have the evidence. I have the evidence where  
4 they are marketing. And I've asked for the marketing  
5 material so I could look at what the marketing materials and  
6 it's been said, no, wait until the sale motion in July.  
7 Well, that's been too late. There's false advertising going  
8 on, number one. Number two, the phone number on the  
9 building goes to a 99 cent real estate Hilco dedicated  
10 hotline for 99 cent store bankruptcy for the real estate.  
11 And I brought that to the attention. And I have a recording  
12 of that phone call that shows what number you call, the  
13 number that's on the building.

14 I want to just go back for a second, Your Honor,  
15 and mention a few things. Once the settlement agreement got  
16 signed, the building was virtually empty. But the  
17 settlement agreement supplanted the loan agreement,  
18 supplanted their rights. And the settlement agreement  
19 allowed me or my designee to acquire the note for \$26  
20 million, meaning I could bring another lender, I could bring  
21 in another bank to take them out. That was the deal.

22 So once I did that, I rolled up my sleeves. I  
23 started going to work every day trying to lease up the  
24 building in a challenging market. And I brought in DC  
25 Partners. They took an entire floor. They're the group

1 that developed the Allen and the Thompson hotel on Allen  
2 Parkway, brought them in, and they've taken a whole floor.  
3 I brought in other tenants. I brought in Regus interested  
4 in moving in, but they won't approve Regus. Regus is IWG.  
5 They've taken over a lot of the WeWork spaces. They're  
6 publicly traded. I've brought in lots of tenants that want  
7 to move into the building. It's a beautiful building. It  
8 deserves -- it's like shutting a chemical plant and saying,  
9 let's sell it while it's shut, then letting it run for a  
10 couple months and then selling it based on revenue, which is  
11 what our plan was.

12           It's very easy to say, you know -- but going back,  
13 at the end of 2022, I meet with a gentleman named Paul  
14 Caldwell, who represents a hedge fund. And his investor is  
15 a billionaire in Hong Kong who's interested in redeveloping  
16 the garage and making it automated. And he meets with me,  
17 first, is interested in taking space in the building. Then  
18 he becomes interested in buying the building. He had signed  
19 an LOI on Post Oak at the (indiscernible) building, but he  
20 loved the building that he came over.

21           Same thing with DC Partners (indiscernible) came  
22 over to meet me. He had signed an LOI. Phoenix Tower, I  
23 convinced him the building was so great, and it has  
24 furniture. So he signed a lease here. So I was doing the  
25 best to lease up the building. And it's been negative for

1     sure, but it'll be positive with tenants.

2             I got Paul Caldwell to come in. He liked the  
3     building. He makes an offer to buy the building for \$136  
4     million. He puts it in writing. It's signed. There's a  
5     recording of a meeting that R.J. Shannon had with Paul  
6     Caldwell that's supposedly privileged, we can't get, which  
7     we'd like to get. But Paul Caldwell, in that memo that Mr.  
8     Shannon provides, he says he didn't sign any agreement with  
9     the debtor. There was no agreement. He has his story.

10            Well, here's what really happened. At the end of  
11    September, he wants to buy the building. I start leasing up  
12    the building. He sees there's activity. He wants to take  
13    two floors and buy the entire building. The offer he makes  
14    is \$75 million for 55 percent. The debtor retains 45  
15    percent. He puts down \$35 million. The debtor gets a first  
16    lien, a carried interest of \$40 million at 7 percent at 20-  
17    year am. So the debtor retains 45 percent passively, and  
18    the building is sold or the asset is sold to Caldwell's  
19    group.

20            Publicly, the debt on the property is \$60, \$70  
21    million. If you look it up, that's what it is. The  
22    confidential agreement is confidential. It says the debt's  
23    26, I can buy for \$26 million. But no one knows that. So  
24    if you're buying a property from someone and their debt is  
25    publicly \$8 million, you're buying it for ten and then you

1 find out it's one, it's going to change your heart on what  
2 you want to do.

3 Mr. Caldwell signs an NDA. Mr. Caldwell then  
4 informed me that Pillsbury represents him in New York and  
5 they asked him to call the Houston office. Then we find out  
6 he's attempting to buy the debt. He later tells me that  
7 he's now uncovered -- he tells me this, Your Honor, that the  
8 bank has agreed to cut the debt in half. I didn't tell him  
9 that. So he has information the bank's taking less than  
10 what the public information is because of the confidential  
11 nature of our settlement.

12 At that point, Your Honor, the deal falls apart.  
13 I tried to bring another lender in, Security State Bank, and  
14 they're a witness as well. They went to committee. They  
15 approved the note on note because commercial lending is  
16 hard, CRV concentration. But lenders can make loan on loans  
17 because it doesn't fall under that C&I bucket.

18 The Bank of Kuwait files a receivership. The  
19 lender tells them that they're trying to get this deal  
20 closed. It's been frustrating efforts after and after and  
21 after. We ask for SNDAs, they won't provide them. We have  
22 tenants that want to move in. We ended up in the  
23 bankruptcy, Your Honor --

24 THE COURT: Mr. Choudhri --

25 MR. CHOUDHURI: The 26th --



1 THE COURT: Mr. Choudhri, anything you're telling  
2 me isn't evidence. It's argument. And you've been going on  
3 now for basically 35 minutes. I'm going to ask you to  
4 basically wrap up in the next five minutes.

5 MR. CHOUDHURI: Yes, Your Honor.

6 THE COURT: We have actual evidence to hear.

7 MR. CHOUDHURI: Yes, Your Honor.

8 THE COURT: Go ahead.

9 MR. CHOUDHURI: So Your Honor, what I wanted to  
10 mention is when you -- I've seen the redlines, and the  
11 redlines include the tax lien as a credit bid. There's that  
12 in there. And it was redlined, it was collapsed, it was  
13 truncated. But there's a tax lien component and there's a  
14 credit bid. So when Mr. Troop tells you that that credit  
15 bid is not the tax lien, well, that's not what the initial  
16 redline showed. What they did is they combined them. But  
17 when you look at the earlier draft, it's bifurcated. So you  
18 can see that is what it is.

19 The note and lien was sold. The thing that has to  
20 be done, Your Honor -- and I'm here and I can represent to  
21 Your Honor that we can solve this. We have a friendly  
22 lender. QB Loop Property has provided the wherewithal and  
23 the proof of funds and the liquidity to Mr. Troop and the  
24 trustee. And they're prepared to move forward and execute  
25 on the loan sale. And they'll come in and they'll step in

1 the shoes of the bank and they're prepared to pay the \$26  
2 million. So we've attempted to do that. There's been an  
3 offer, there's been an acceptance.

4 As far as the credit bid, when you introduce a  
5 credit bid, I can tell you from experience, Your Honor,  
6 people are not going to come, number one. When you have a  
7 process where Hilco markets the property three weeks and  
8 requires 10 percent nonrefundable just to be able to bid,  
9 that's 80 percent. Number two, all parties here, even in  
10 deposition, will agree if the building is more leased up,  
11 it's more valuable. Well, guess who's blocked the leases  
12 since the trustee has been appointed. The Bank of Kuwait,  
13 and we have evidence of that. They said they've got no  
14 leases. We've provided all these leases and they said  
15 they've got no leases. So they've artificially depressed  
16 the value so they can come in and get an advantage to credit  
17 bid.

18 A true market test -- and by the way, everything  
19 should be market tested. I agree with the market test.  
20 What is the largest asset, in my opinion, of this estate?  
21 It's the claim against the Bank of Kuwait. That needs to be  
22 market tested. It hasn't been. We've made offers and  
23 tendered offers for a million, \$700,000, half a million. No  
24 counters. No, we can't do it. We can't do it. We've asked  
25 the Bank of Kuwait, what consideration are they providing

1     for this release? \$200,000, \$300,000 is what they say. And  
2     Your Honor heard earlier that the consideration is they get  
3     to credit bid. That's the consideration. That doesn't make  
4     any logical sense.

5             And I can tell, Your Honor, I've been in real  
6     estate. I started real estate in '92 with my dad when I was  
7     12. I bought my first property in '95. I bought a lot of  
8     CMBS loans in 2008, '09, '10, '11. I've never -- in my  
9     opinion, if there's a true property sale, it should be a  
10    market, open market. People bid on it, whatever the market  
11    is. And if the Bank of Kuwait wants to bid on it, then they  
12    can do a round credit. They have the wherewithal.

13            But to say that, before we even get there, they  
14    have to have standing. It's my belief, Your Honor, that  
15    they don't have standing, they don't own the note and we're  
16    prepared to step in. And if Your Honor would like to enter  
17    an order ordering a sale of the note, or if they're willing  
18    to sell the note and honor the agreement at \$26 million,  
19    which was the deal, then we have a friendly lender that will  
20    step in, Your Honor. That's all I wanted to say.

21            And the other thing, Your Honor, I just wanted to  
22    say that the evidence will show that all of these actions  
23    were directed by the bank, 100 percent of these actions,  
24    hiring Hilco, hiring all of these people were directed. And  
25    the plan from day one was to auction the property and deal

1 with the claims later. We never had a chance. That's what  
2 I went back and I'll show Your Honor more times as well.  
3 Thank you, Your Honor.

4 THE COURT: All right.

5 MR. CHOUDHURI: Thanks for your time.

6 THE COURT: Thank you.

7 Mr. Troop, since we kind of went out of order,  
8 I'll let you respond to anything that Mr. Choudhri just said  
9 to the extent that you want to or need to.

10 MR. TROOP: Can I just have one minute, Your  
11 Honor?

12 THE COURT: Sure.

13 MR. TROOP: Cover up that mic in the middle.

14 THE COURT: Go ahead.

15 MR. TROOP: Thank you, Your Honor. Andrew Troop,  
16 again, from Pillsbury, for NBK. Your Honor, suffice it for  
17 now to say that there is very little that Mr. Choudhri  
18 espoused over the last 40 minutes with which the bank agrees  
19 or that is true. And if, as we go through today's hearing,  
20 what he said is in fact deemed by the court to be relevant,  
21 we reserve all of our objection in that regard. We will  
22 answer them as necessary. But again, Your Honor, this case  
23 needs to go forward. The credit bidding motion needs to be  
24 decided today. Confirmation should be decided today. And  
25 this case should be headed towards its end, not towards its

1 middle and additional expense and additional delay. Thank  
2 you.

3 THE COURT: Thank you.

4 Mr. Burks, you may call your first witness.

5 MR. BURKS: Your Honor, on behalf of 2425 WL, at  
6 this time we call our first witness as -- one moment, Judge  
7 -- where's my pen -- Mr. Michael Carter, Your Honor.

8 THE COURT: Mr. Carter, if you'll come forward,  
9 wherever you are. Mr. Carter, if you'll come to the podium  
10 first, I'll swear you in. Once I've sworn you in, you can  
11 be seated. Please raise your right hand to be sworn, sir.

12 MR. CARTER: Yes.

13 THE COURT: Do you swear or affirm to tell the  
14 truth, the whole truth and nothing but the truth, so help  
15 you God?

16 MR. CARTER: I do.

17 THE COURT: All right. Mr. Carter, you may be  
18 seated there. Please make sure you speak into the  
19 microphone.

20 Mr. Burks, as soon as he's seated, you may  
21 proceed.

22 MR. BURKS: Thank you, Judge.

23 DIRECT EXAMINATION OF MICHAEL CARTER

24 BY MR. BURKS:

25 Q Mr. Carter, you've already stated your name for the

1 record, I believe. Will you please tell the court what your  
2 current occupation is?

3 A I'm a relationship manager at the bank of the -- at the  
4 Bank of Kuwait.

5 Q Is it the Bank of Kuwait or the National Bank of  
6 Kuwait?

7 A The National Bank of Kuwait.

8 Q And where -- out of where do you office, sir?

9 A 299 Park Avenue.

10 Q In New York City?

11 A Yes.

12 Q And in your position as relations manager, what do you  
13 generally do?

14 A I seek out new business. I do the credit applications  
15 for that. I close the loans and I manage them.

16 Q All right. Have you ever testified in bankruptcy court  
17 before?

18 A You mean outside of this one?

19 Q Yes, sir.

20 A No.

21 Q And do you have -- what is your area of expertise? I  
22 understand what you do for the bank, and I appreciate that.  
23 What is your area of expertise in terms of valuation of  
24 properties? Do you have any expertise in that area?

25 A I have an appraisal certificate that I got when I was

1 at -- first started in banking at the Bank of New York.

2 Q Good, and how long ago was that?

3 A That was 1989.

4 Q Have you taken an appraisal or done an appraisal of the  
5 building at issue here in this case?

6 A Say that again. You asked me if I had done an  
7 appraisal?

8 Q Yes, sir. Have you done an appraisal?

9 A No.

10 Q Have you seen an appraisal?

11 A Yes.

12 Q Has the bank taken an appraisal or ordered an  
13 appraisal?

14 A Yes, several of them.

15 Q And have you looked at those?

16 A Yes.

17 Q Based on those appraisals, what do you believe is the  
18 value of the building at auction?

19 MR. FITZMAURICE: Objection, Your Honor.

20 THE COURT: Stand up, and what's the objection?

21 MR. FITZMAURICE: Your Honor, calls for  
22 speculation. The purpose of the auction is itself to set  
23 the value. The witness' opinion, as to -- the witness'  
24 opinion today as to what's going to happen tomorrow at the  
25 auction is not relevant to any issue in this -- in

1 connection with this proceeding.

2 THE COURT: I'll overrule the objection. Go  
3 ahead.

4 BY MR. BURKS:

5 Q Do you have an opinion as to the value of the building  
6 at issue in this case, sir?

7 A Our last appraisal said it was worth \$18.6 million and  
8 \$20 million as raw land.

9 Q All right, and that's your opinion of the value based  
10 on that appraisal, sir?

11 A I believe that's a reasonable number.

12 Q All right. Now have you reviewed this account, this  
13 loan account involving this case and involving this  
14 property?

15 A Yes.

16 Q And what is the amount that is due, in your opinion,  
17 based on National Bank of Kuwait's records currently?  
18 Currently, what is the amount due?

19 A The total amount due is approximately \$70 million.

20 Q All right, and you're not trying to round it up or give  
21 the exact number, but it's in the neighborhood of \$70  
22 million?

23 A Yes.

24 Q All right, sir. And are you aware of the Chapter 11  
25 plan that the National Bank of Kuwait has filed in this



1 case?

2 A Yes.

3 Q Have you reviewed bankruptcy claims outside of this  
4 case before?

5 A No.

6 Q Do you have general understandings of what the plan  
7 filed in this case has? And I'm asking you a general  
8 understanding within your own definition of whatever that  
9 means.

10 MR. FITZMAURICE: Objection, Your Honor,  
11 relevance. This is -- we're here on the motion to prohibit  
12 as to credit bidding.

13 THE COURT: I'll sustain the objection.

14 BY MR. BURKS:

15 Q Do you think that the National Bank of Kuwait's  
16 provision for credit bidding at this auction is a provision  
17 that's been propounded in good faith?

18 MR. FITZMAURICE: Objection, Your Honor, vague as  
19 to provision and also that whether -- that's a question that  
20 goes to confirmation of the plan, not to the credit bidding  
21 issue, which is what we're here on now.

22 THE COURT: I'll sustain the objection. Thank  
23 you.

24 BY MR. BURKS:

25 Q Is it your understanding that on the auction

1 proceeding, National Bank of Kuwait has a right to credit  
2 bid?

3 A Yes.

4 Q And what does a credit bid mean to you?

5 A That means that we bid our mortgage claim.

6 Q And when you credit bid, how much cash out of pocket  
7 will the bank pay?

8 A Typically there are fees involved in a credit bid.

9 Q Are there fees involved in this case?

10 A Yes.

11 Q And how much will the National Bank of Kuwait pay out  
12 of pocket?

13 A There are administrative fees as well as other payments  
14 we've agreed to make for some of the other creditors.

15 Q As part of the agreement to credit bid, are you saying  
16 that you've agreed to make payments to the Chapter 13 -- the  
17 Chapter 11 liquidating trustee?

18 MR. FITZMAURICE: Objection, Your Honor. Again,  
19 that's confirmation of the plan. That's not the motion to  
20 credit bid at the auction tomorrow.

21 MR. BURKS: Response?

22 THE COURT: Go ahead. Respond.

23 MR. BURKS: There is no way to separate out case  
24 law. If there are any ties to the conditions of credit,  
25 then there is no way to separate that out, Judge.

1           THE COURT: I think there is. So I'll sustain the  
2     objection. Thank you.

3           MR. BURKS: All right.

4     BY MR. BURKS:

5     Q     Looking at your declaration that was filed at Docket  
6     Number 514, sir --

7           MR. FITZMAURICE: Your Honor, same objection. The  
8     declaration was filed in support of confirmation of the  
9     plan.

10          THE COURT: I'll sustain the objection. I've read  
11     specifically the motion at 353. It's got to be part of that  
12     motion. I'm going to sustain the objection. Go ahead.

13     BY MR. BURKS:

14     Q     Does National Bank of Kuwait have cash sufficient to  
15     pay a \$71 million cash offer at auction? If you're not a  
16     credit bid, does National Bank of Kuwait have cash  
17     sufficient to pay \$71 million at auction?

18          MR. FITZMAURICE: Objection, Your Honor. I guess  
19     assumes facts not at evidence, that the motion is to credit  
20     bid and whether or not we should be allowed to credit bid,  
21     not whether the bank has sufficient resources to pay cash.  
22     We're focused on whether or not there is going to be a  
23     credit bid at the auction tomorrow.

24          THE COURT: I'll sustain the objection.

25     BY MR. BURKS:

1 Q Are you aware that your attorney in opening argument  
2 argued that the cash collateral final order has released all  
3 claims against National Bank of Kuwait?

4 MR. FITZMAURICE: Objection, relevance of the  
5 witness' knowledge of a legal argument that counsel made in  
6 the hearing.

7 THE COURT: I'll sustain the objection. I'm not  
8 sure what relevance that has, Mr. Burks.

9 MR. BURKS: The relevance is that under the case  
10 law, our argument is that this isn't a -- this is not a pure  
11 credit bid. This is a release. This is a credit bid plus  
12 cash in turn for a release of all cash causes of action, and  
13 you can argue that that is a confirmation issue. But --

14 THE COURT: I've already ruled on the objection.  
15 I'm not going to change my ruling based on what you just  
16 said. You can ask your next question, please.

17 MR. BURKS: Yes, Your Honor.

18 BY MR. BURKS:

19 Q In your experience as the banker for NBK, have you ever  
20 dealt with any other credit bids? Have you ever been in a  
21 situation where there's been credit bidding by NBK on any  
22 other properties?

23 MR. FITZMAURICE: Objection, relevance, Your  
24 Honor.

25 THE COURT: Mr. Burks, let me kind of -- and I'm

1 going to sustain the objection. But let's -- I reviewed the  
2 motion at 353 and I'm familiar with 363 and credit bidding.  
3 Okay. Basically there are several claims made in the  
4 motion. Okay. The first is that NBK has no interest in the  
5 property. Okay. Second, that there's been a breach of  
6 contract. Three, that there are claim objections pending.  
7 Okay. And fourth, that there's a sufficient dispute between  
8 the parties that I shouldn't allow credit bidding. That's  
9 really what I'm interested in hearing, okay, because that's  
10 what the motion says. All right. So if you want to move  
11 forward on those bases, which is what's pled, that's what  
12 I'd like to hear.

13 MR. BURKS: Yes, Your Honor.

14 THE COURT: Okay. Thank you.

15 BY MR. BURKS:

16 Q Mr. Carter, are you aware that the debtor -- are you  
17 aware that there's been litigation filed against National  
18 Bank of Kuwait in connection with this property in this  
19 case?

20 A Yes.

21 Q Has any of that mitigation been resolved, adjudicated?

22 MR. FITZMAURICE: Objection, Your Honor. Does  
23 counsel mean other than through the settlement agreement and  
24 the claims that were withdrawn with prejudice under the  
25 settlement agreement?

1 MR. BURKS: Response?

2 THE COURT: Go ahead, Mr. Burks.

3 MR. BURKS: The effect of that settlement  
4 agreement, the status of that settlement agreement is  
5 actually (indiscernible) litigation.

6 THE COURT: And I'm sure that's going to be part  
7 of the evidence. But I think to ask -- have him answer that  
8 question is probably unfair because he probably doesn't know  
9 what the legal effect of the settlement agreement is. But  
10 I'm going to hear it at some point in time, I'm assuming,  
11 from some witness.

12 MR. BURKS: But the question is, is he aware that  
13 there's -- that that agreement's in dispute --

14 THE COURT: Well, whether he's aware of it or not,  
15 it doesn't really make any difference to me, I mean, because  
16 you're going to raise the issue that somehow they breached  
17 it. What he thinks, I really don't care. It's what I  
18 think. Okay. So go ahead, ask the next question.

19 MR. BURKS: Yes, Your Honor.

20 THE COURT: Go ahead.

21 BY MR. BURKS:

22 Q What is your understanding of the effect of the credit  
23 bid if you're successful pursuant to a plan to credit bid in  
24 this property? What do you believe the effect of that will  
25 be on National Bank of Kuwait?

1 A We would get possession of the property.

2 Q Would you get anything else?

3 A I believe there's some cash held by the trustee from  
4 the building.

5 Q And you'd get that cash?

6 A We'd get that cash.

7 Q Would you get releases?

8 A We'd get releases from the (indiscernible) --

9 MR. FITZMAURICE: Objection, Your Honor. As a  
10 result of the credit bid or as a result of the confirmation  
11 of the plan? We're here on the credit bidding motion. The  
12 plan is a different topic.

13 THE COURT: Let's go ahead and make your question  
14 a little more clear because I think the credit bidding isn't  
15 going to affect any releases as best I know. Go ahead, ask  
16 your question.

17 BY MR. BURKS:

18 Q Are you aware of what the marketing was prior to in  
19 this bidding process?

20 A What the marketing was?

21 Q Yeah, the marketing of the property leading up to the  
22 auction, et cetera.

23 A Hilco was hired by the trustee to market the property.

24 Q And how long do they market it for?

25 A I believe it was about 45 days.

1 Q Forty-five days. In your opinion, is 45 days enough  
2 time to maximize auctions, auction bids, cash bids as  
3 against a credit bid?

4 MR. FITZMAURICE: Objection, Your Honor, to the  
5 question for calling for opinion evidence, calls for  
6 speculation as Mr. Carter is not here as an expert to offer  
7 opinion evidence.

8 THE COURT: I'll let you respond to that, Mr.  
9 Burks.

10 MR. BURKS: So the question is whether or not  
11 there's cause to prohibit a credit bid in this case. I  
12 think, frankly, based on the opening arguments, there is.  
13 That said, this is the man who's been presented by NBK as  
14 having knowledge of this case. I want to know -- I'm going  
15 -- my next question will be what they intend to do with the  
16 property.

17 THE COURT: I'll sustain his objection. You can  
18 ask your next question. Thank you.

19 BY MR. BURKS:

20 Q If the Bank of Kuwait is successful in its credit bid,  
21 do you intend to sell it for the amount of the credit bid or  
22 a higher amount?

23 MR. FITZMAURICE: Objection, Your Honor, relevance  
24 to whether or not -- whatever the bank is going to do after  
25 it acquires the property, if it does, is not relevant to



1       whether or not it's entitled --

2                   THE COURT:  I'll sustain the objection.

3       BY MR. BURKS:

4       Q       Why do a credit bid instead of a cash bid, sir?

5                   MR. FITZMAURICE:  Objection, relevance, Your  
6       Honor.

7                   THE COURT:  I'll sustain the objection.

8                   MR. BURKS:  I pass the witness, Your Honor.

9                   THE COURT:  Thank you.

10                  Mr. Fitzmaurice?

11                  MR. FITZMAURICE:  No questions for the witness,  
12       Your Honor.

13                  THE COURT:  Thank you, sir.  You may step down.

14                  Next witness, Mr. Burks?  Oh, excuse me.  I  
15       apologize.

16                  Sit back down, sir.  I'm going to let Mr.  
17       Choudhuri ask any questions he may have.

18                               DIRECT EXAMINATION OF MICHAEL CARTER

19       BY MR. CHOUDHURI:

20       Q       Hello, Mr. Carter.  How are you?

21       A       Good.

22       Q       Mr. Carter, do you remember -- do you recall giving  
23       your deposition.

24                  MR. FITZMAURICE:  Objection, relevance, Your  
25       Honor.

1 THE COURT: It's preliminary. I'll allow it.

2 MR. CHOUDHURI: Thank you.

3 THE COURT: Go ahead.

4 MR. CHOUDHURI: Thank you.

5 THE WITNESS: Yes.

6 BY MR. CHOUDHURI:

7 Q And everything in your deposition was truthful?

8 A Yes.

9 Q And you still stand by all the statements, all the  
10 answers in your deposition were truthful and under oath as  
11 if you were sitting here?

12 A Yes.

13 Q And you've given your deposition how many times in this  
14 matter?

15 MR. FITZMAURICE: Objection, relevance, Your  
16 Honor.

17 THE COURT: Again, I don't know where he's going.  
18 But I'm going to give him a little bit of leeway. If  
19 eventually he's going to ask a question about a deposition,  
20 you can raise your objection.

21 Go ahead. Do you want to project, Mr. Choudhri?

22 MR. CHOUDHURI: Yeah.

23 THE COURT: Okay. Then you can connect. Do you  
24 see a mic cord right in front of you --

25 MR. CHOUDHURI: So the left?

1 THE COURT: You can just put it up there.

2 MR. CHOUDHURI: While he's doing that, I'll start.

3 BY MR. CHOUDHURI:

4 Q Mr. Carter, do you recall testifying that you have not  
5 received any leases or proposals to lease up the building  
6 from trustee Chris Murray?

7 A Correct.

8 Q So since Judge Norman has appointed the Chapter 11  
9 trustee, you have not received any leases from the Chapter  
10 11, correct?

11 A Correct.

12 Q Has the Chapter 11 trustee asked you about SNDAs?

13 MR. FITZMAURICE: Objection, vague as to time.

14 BY MR. CHOUDHURI:

15 Q Since he was appointed -- well, let me back up. The  
16 Chapter 11 trustee was appointed by the Honorable Judge  
17 Norman on February 9, 2024, correct?

18 A I don't remember the specific date.

19 Q I can represent to you that on February 9th, on Friday,  
20 the Chapter 11 trustee was appointed by Judge Norman. And  
21 since that's happened, you have not received any leases for  
22 the property at 2425, correct?

23 A Correct.

24 Q And has the Chapter 11 trustee asked you for any SNDAs?

25 A No.

1 Q And the Bank of Kuwait, you mentioned in your  
2 deposition, is willing to, wants to do SNDAs, correct?

3 MR. FITZMAURICE: Objection, Your Honor, assumes  
4 facts not in evidence.

5 THE COURT: I'll sustain the objection.

6 BY MR. CHOUDHURI:

7 Q Didn't you in your deposition testify that the Bank of  
8 Kuwait wants SNDAs and welcomes them, something to that  
9 effect? I can get your deposition and show you. But do you  
10 recall that answer and question line?

11 MR. FITZMAURICE: Objection, Your Honor, relevance  
12 and also the witness is here. He can ask a question as  
13 opposed to saying is it true about something you testified  
14 at some point.

15 THE COURT: You can't impeach him. So ask the  
16 question.

17 BY MR. CHOUDHURI:

18 Q Does the Bank of Kuwait provide SNDAs when its  
19 borrowers request SNDAs?

20 MR. FITZMAURICE: Objection, Your Honor, to the  
21 extent we are talking about a borrower other than the one at  
22 issue here.

23 THE COURT: Be more specific, Mr. Choudhri.

24 BY MR. CHOUDHURI:

25 Q The borrower -- we can agree, Mr. Carter, the borrower

1 is Galleria 2425 Owner, LLC, correct? The debtor and the  
2 borrower is the same?

3 A Yes.

4 Q So going back to my last question --

5 MR. CHOUDHURI: For the gentleman, I don't know if  
6 you can read it -- can it be read (indiscernible) --

7 THE COURT: Yeah. It doesn't work that way here.  
8 Everything we're saying is being electronically recorded,  
9 but there's no way to read back anything on the record.

10 BY MR. CHOUDHURI:

11 Q Does the National Bank of Kuwait provide SNDAs?

12 THE COURT: To whom? When? Be more specific.

13 BY MR. CHOUDHURI:

14 Q If the trustee -- if the Chapter 11 trustee asked you  
15 to provide an SNDA, would that be a hurdle for the Bank of  
16 Kuwait to provide an SNDA?

17 MR. FITZMAURICE: So objection, Your Honor, calls  
18 for speculation, assumes facts not in evidence. It assumes  
19 that there actually -- there has been a request. What would  
20 the bank do in this hypothetical situation?

21 THE COURT: I'll sustain the objection. I think  
22 the testimony at this point was if the trustee hasn't  
23 presented any. So there's no support for your question.  
24 Ask another question, please.

25 BY MR. CHOUDHURI:

1 Q So we're clear, you haven't received any SNDAs since  
2 the appointment of the trustee in this case?

3 A Correct.

4 Q And what about before the appointment of the trustee?  
5 Have you received any SNDAs from the borrower/the debtor?

6 MR. FITZMAURICE: Objection, relevance to the  
7 bank's credit bidding at the auction tomorrow.

8 THE COURT: What's the relevance, Mr. Choudhri?

9 MR. CHOUDHURI: It goes back to motivation, Your  
10 Honors. Their motivation has been to frustrate, thwart  
11 efforts so they could depress the value and be the  
12 beneficiary at the auction.

13 THE COURT: I'll sustain the objection. And  
14 again, I'll tell you what I told Mr. Burks. I've read your  
15 motion. All right. And your motion has specific  
16 allegations in it. As far as testimony, I'm more than happy  
17 to hear any testimony you have regarding what you've pled.  
18 So just limit it to that. Thank you.

19 BY MR. CHOUDHURI:

20 Q The Bank of Kuwait has not received any offers to buy  
21 the note, correct?

22 MR. FITZMAURICE: Objection, Your Honor, relevance  
23 to credit bidding.

24 THE COURT: I'll sustain the objection.

25 BY MR. CHOUDHURI:

1 Q Mr. Carter, is it true that the Bank of Kuwait -- Mr.  
2 Carter, on the credit bid, is the Bank of Kuwait aware that  
3 the trustee wanted to limit the credit bid in any way, shape  
4 or form?

5 A I don't know.

6 Q Who would know?

7 A I assume the trustee.

8 Q Mr. Carter, you're aware that you were provided a  
9 deposition notice of, I think, a 30(b)(6) with eight topics.  
10 Do you recall that?

11 MR. FITZMAURICE: Objection, Your Honor, relevance  
12 to the credit bidding motion and the witness' testimony here  
13 today.

14 THE COURT: Well, I know, Mr. Choudhri, you have  
15 an argument relative to plan confirmation. This is not plan  
16 confirmation. And I've said as much, that you can raise  
17 those issues in plan confirmation. Now is not the time.

18 MR. CHOUDHURI: Your Honor, in that deposition  
19 notice, one of the topics that was -- all the topics were  
20 not objected to. One of the topics was credit bidding. So  
21 we could ask about (indiscernible) --

22 THE COURT: But again, you filed a motion that  
23 specifically says you object to credit bidding based on  
24 these grounds. And those are the -- that's what I want to  
25 hear evidence about. Okay. So please limit it to what

1     you've pled. I mean, you have a pleading in front of me and  
2     it specifically talks about NBK doesn't have an interest in  
3     the property. All right, that basically there's been a  
4     breach of contract, that there are claim objections pending.  
5     There's sufficient dispute between the parties that I  
6     shouldn't allow credit bidding. That's what I want to hear.  
7     Okay. So please focus on those issues because that's how  
8     I'm going to make a decision on credit bidding. All right.  
9     Go ahead.

10    BY MR. CHOUDHURI:

11    Q     So who would decide the credit bid, Mr. Carter, at the  
12    National Bank of Kuwait? Who would decide how much to  
13    credit bid?

14               MR. FITZMAURICE: Same objection, Your Honor, as  
15    to relevance.

16               THE COURT: I'll sustain the objection as not  
17    relevant to what I want to hear, Mr. Choudhri.

18    BY MR. CHOUDHURI:

19    Q     What is the amount under the settlement agreement or  
20    any subsequent agreement that the Bank of Kuwait agree to be  
21    paid either in assignment of its (indiscernible) or full  
22    satisfaction of its debt?

23               MR. FITZMAURICE: So Your Honor, objection as to  
24    relevance in the credit bid. It assumes facts not in  
25    evidence. It's a compound question.



1 THE COURT: And the document speaks for itself.

2 MR. TROOP: And the -- thank you.

3 THE COURT: I'll sustain the objection.

4 BY MR. CHOUDHURI:

5 Q Are you aware of an amount of \$26,038,000? Let me  
6 withdraw that. The outcome of any litigation has not been  
7 determined yet as in the dispute between myself and the Bank  
8 of Kuwait, correct?

9 MR. FITZMAURICE: Objection, Your Honor, vague as  
10 to time, given the provisions of the settlement agreement  
11 which reflect a waiver of claims and stipulations of  
12 dismissal with prejudice of pending lawsuits.

13 THE COURT: Mr. Choudhri, whatever happened in the  
14 underlying litigation or didn't happen in the underlying  
15 litigation, there are probably, I'm assuming, documents that  
16 evidence what happened or didn't happen, and I'm happy to  
17 hear them and see them in evidence. This may or may not be  
18 the witness to do that through. Okay. But again, what he  
19 thinks relative to what the documents say doesn't mean a  
20 whole lot of difference to me because it's what I think, and  
21 so I really need to see them and then you can ask questions  
22 about them. Okay, and you may have -- you may have  
23 legitimate, valid disputes. I'm not sure this is the  
24 witness that's going to get you where you want to go. Okay.  
25 Go ahead.

1 BY MR. CHOUDHURI:

2 Q Does the Bank of Kuwait intend to have a United States  
3 headquarters in this building?

4 MR. FITZMAURICE: Objection, Your Honor,  
5 relevance.

6 THE COURT: Mr. Choudhri, again, and I hate to go  
7 back, I'm worried about what's in your motion. I don't know  
8 how that has any relevance to anything you've pled. I'll  
9 sustain the objection and ask you to move on and concentrate  
10 on what's in the motion.

11 BY MR. CHOUDHURI:

12 Q Mr. Carter, you testified in the deposition the plan is  
13 -- the plan and the sale motion are part and parcel. Do you  
14 recall that?

15 MR. FITZMAURICE: Objection, Your Honor. He's  
16 using the transcript, I guess, to try to impeach him about  
17 something he hasn't testified to and also relevance.

18 THE COURT: So you can ask him questions, sir.  
19 You can't impeach him until he's basically said something.  
20 Okay. Go ahead.

21 BY MR. CHOUDHURI:

22 Q Bank of Kuwait's plan is tied to the sale motion,  
23 correct?

24 MR. FITZMAURICE: Objection, Your Honor. That's  
25 confirmation -- I think a confirmation issue, not whether

1 the bank can credit bid.

2 THE COURT: It is, and I'll sustain the objection.

3 Again, we're here just on credit bidding. We're going to  
4 get to plan confirmation, but we've got to get through this  
5 credit bid motion today. We may be here until 2:00 in the  
6 morning. You're not making things any easier. I'm going to  
7 warn you one more time. You need to stick to issues that  
8 are relevant. If you continue to ask questions that are  
9 nonrelevant, I'm just going to tell you to sit down. Okay?  
10 So, fair warning. Go ahead.

11 BY MR. CHOUDHURI:

12 Q Who owns the note of lien as we sit here today? What  
13 party?

14 A NBK.

15 Q And is that a disputed -- is that a disputed fact? Is  
16 that under dispute, the ownership of the note?

17 A That's a fact.

18 Q Is it under a -- is there a pending dispute as to who  
19 owns the note of lien today?

20 A I understand there's some filing about it.

21 Q So is there a challenge? Is it on dispute?

22 A What I'm saying is there's a filing about it.

23 Q So as we sit here today, the minimum bid, or there's a  
24 stalking horse bid, which has a credit bid component in it,  
25 right?

1       A       Yes.

2       Q       And can you explain how that works, please, so I  
3       understand, we understand?  What are the bid increments from  
4       the stalking horse agreement on the sale motion that was  
5       entered?

6               MR. FITZMAURICE:  So objection, Your Honor,  
7       relevance as to whether or not the bank is -- whatever the  
8       overbid is, it is not relevant to whether the bank is  
9       entitled.

10              THE COURT:  I agree.  I'll sustain the objection.  
11       Again, Mr. Choudhri, another warning.  You need to ask  
12       questions that are relevant to the issue of whether there  
13       should actually be credit bidding or not.  That's what I'm  
14       interested in hearing.  All right.  Go ahead.

15       BY MR. CHOUDHURI:

16       Q       Is the bank willing to refrain from credit bidding to  
17       allow an open market so where buyers can make offers and not  
18       be handicapped by an imputed credit bid?

19              MR. FITZMAURICE:  So objection, Your Honor,  
20       assumes facts that are not in evidence.  It calls for  
21       speculation.  It's also not relevant to whether or not the  
22       bank should be entitled to credit bid in the first place.

23              THE COURT:  I'll sustain the objection.

24       BY MR. CHOUDHURI:

25       Q       Mr. Carter, do you know anything about the FF&E in the

1 building?

2 MR. FITZMAURICE: Same objection, Your Honor.

3 THE COURT: I'll sustain the objection. This is  
4 your last warning, Mr. Choudhri. I need questions that are  
5 relevant to the motion. All right. Credit bid motion. If  
6 you have a dispute as to ownership of the personal property  
7 in the building, that has nothing to do with credit bidding.

8 BY MR. CHOUDHURI:

9 Q If the bank credit bids, does that include -- does the  
10 bank's credit bid include furniture in the building?

11 MR. FITZMAURICE: So, same objection, as to  
12 relevance.

13 THE COURT: Sustain the objection. And I'm going  
14 to give you one final warning, Mr. Choudhuri, and I'm happy  
15 to print the motion that I've read, that I'm looking at for  
16 you to look at if you want to take a short break and read  
17 it.

18 MR. CHOUDHURI: Thank you. Yeah.

19 THE COURT: Okay. So that you ask relevant  
20 questions.

21 MR. CHOUDHURI: I appreciate it.

22 THE COURT: You're one more question from me  
23 cutting you off.

24 MR. CHOUDHURI: I appreciate it.

25 THE COURT: So bear with me for one second. All

1 right. So the record's clear, I'm printing ECF 353. I'm  
2 going to hand it to Mr. Choudhri. We're going to take a 10-  
3 minute break and we'll come back and Mr. Choudhri can  
4 continue his examination. You may take a minute  
5 (indiscernible) --

6 MR. BURKS: Thank you, Your Honor. May I approach  
7 Mr. Choudhuri?

8 THE COURT: You may.

9 MR. TROOP: No, that's the one that I filed. The  
10 one that is removed is --

11 THE COURT: All right. Mr. Burks, you need to be  
12 aware that those mics are picking up everything you say.  
13 Everything you've been talking about is all over the record.

14 MR. BURKS: I'm sorry. Thank you, Judge.

15 THE COURT: So if you have discussions, you either  
16 want to mute your mics or you want to take it outside.

17 MR. BURKS: How do I mute my mic, Your Honor? I  
18 can't -- thank you, Judge. I saw a mute button on the  
19 screen and foolishly I touchscreen it, Judge. I apologize.  
20 Thank you, though.

21 CLERK: All rise.

22 (Recess)

23 CLERK: All rise.

24 THE COURT: Please be seated.

25 Mr. Carter, I'll remind you that you're still

1 under oath. Please be seated, sir.

2 All right. Mr. Choudhri, next question, please.

3 BY MR. CHOUDHURI:

4 Q Mr. Carter, you're most familiar with the claims  
5 against NBK by the debtor, correct?

6 MR. FITZMAURICE: Same relevance objection, Your  
7 Honor, Mr. Carter's familiarity with claims by NBK against  
8 the debtor.

9 THE COURT: I agree. It's not relevant.

10 BY MR. CHOUDHURI:

11 Q Was one of the topics in the 30(b)(6) claims against  
12 the bank in credit bidding?

13 MR. FITZMAURICE: Same objection as to relevance,  
14 Your Honor.

15 THE COURT: I'm not sure I understand the  
16 question. Go ahead. Rephrase the question.

17 MR. CHOUDHURI: Sorry, Your Honor. So --

18 THE COURT: And Mr. Choudhuri, I'm confused.  
19 You're talking about the bank's claims against the debtor or  
20 the debtor's claims against the bank?

21 MR. CHOUDHURI: The debtor's claims against the  
22 bank.

23 THE COURT: Because the first question you asked  
24 was did the bank have any claims against the debtor, which  
25 is the reason I overruled it on relevance.

1 MR. CHOUDHURI: Sorry.

2 THE COURT: So just make sure that you understand  
3 what you're asking. Go ahead.

4 BY MR. CHOUDHURI:

5 Q Mr. Carter, you sat for a 30(b)(6) deposition with  
6 eight topics, and one of those topics was credit bid and  
7 claims against the bank by the debtor. Do you recall that?

8 MR. FITZMAURICE: Objection, Your Honor,  
9 relevance. But also if there is --

10 THE COURT: Compound question. Just one question  
11 at a time, Mr. Choudhri. You can't ask multiple questions  
12 in the question.

13 BY MR. CHOUDHURI:

14 Q You were the designated representative with the most  
15 knowledge for 30(b)(6) deposition, correct?

16 MR. FITZMAURICE: Objection, Your Honor, misstates  
17 the -- it calls for a legal conclusion that misstates the  
18 applicable rule. It's also not relevant to the issue of  
19 whether the bank should be allowed to credit bid tomorrow.

20 THE COURT: I'll sustain the objection. Again,  
21 Mr. Choudhuri, let's focus on the motion which I gave you a  
22 copy of. You have it in your hand. Ask your questions.

23 BY MR. CHOUDHURI:

24 Q Who would have the most knowledge --

25 THE COURT: Finish your question.



1 BY MR. CHOUDHURI:

2 Q Has the court found what the claim is, what the amount  
3 of claim is, Mr. Carter? Has there been a finding of what  
4 the amount of the claim is as we sit here today?

5 MR. FITZMAURICE: Objection, Your Honor,  
6 relevance. I don't think the court needs to determine the  
7 exact amount of the claim in order for the bank to be able  
8 to credit bid.

9 THE COURT: I'll allow the question. I think it  
10 dances around the issue, but I'm not sure what he -- again,  
11 Mr. Choudhri, what he thinks relative to what I've done, I  
12 know what I've done. Okay. I know what I'm going to do  
13 hopefully after I hear all the evidence. What he thinks  
14 really doesn't make any difference to me. I mean, I know  
15 that I haven't ruled on any of the claim objections. You  
16 don't need evidence as to that. I'm aware of that. Okay.

17 BY MR. CHOUDHURI:

18 Q If the bank is successful as a credit bidder, and it's  
19 found that the bank doesn't have a claim, how does the bank  
20 intend to deal with that?

21 MR. FITZMAURICE: So objection as to relevance.  
22 What might happen after the auction is not relevant to  
23 whether or not the bank can credit bid at the auction.

24 THE COURT: I agree. I'll sustain the objection  
25 based on relevance.

1 BY MR. CHOUDHURI:

2 Q Are you aware what the impact of credit bidding does?

3 MR. FITZMAURICE: Objection, vague, and also --

4 THE COURT: And I'll sustain the objection. It's  
5 vague and I'm not sure. Again, Mr. Choudhri, so maybe it  
6 will help you if I give you my viewpoints on this to move  
7 this along. Okay. You're going to have to show cause for  
8 their not -- for credit bidding not to be allowed. Okay.  
9 This witness probably can't prove up your case. Okay.

10 You're going to have to basically give me some sort of  
11 evidence that I agree with you that you've got cause that  
12 there shouldn't be credit bidding. I don't think this  
13 witness is going to get you to where you want to go. Okay.  
14 You may have witnesses which will get you where you want to  
15 go. But he's not that person. I promise. Okay.

16 MR. CHOUDHURI: Okay.

17 THE COURT: All right. Ask your next question.

18 BY MR. CHOUDHURI:

19 Q Mr. Carter, are you aware that the bank received an  
20 offer contract from Holland & Knight for \$85 million?

21 MR. FITZMAURICE: I wanted to make sure the  
22 question was done before. But objection as to relevance,  
23 assumes facts that are not in evidence. If there is such an  
24 offer, the best evidence rule suggests that we should look  
25 at the document itself.

1 THE COURT: I'll sustain the objection.

2 BY MR. CHOUDHURI:

3 Q Mona Dajani represents the Bank of Kuwait, correct?

4 MR. FITZMAURICE: Objection, Your Honor, relevance  
5 as to whether or not the bank can credit bid tomorrow.

6 THE COURT: I'll sustain the objection. Mr.  
7 Choudhri, we're back to where we were before, which is --

8 MR. CHOUDHURI: Sure.

9 THE COURT: -- I've given you the motion. I've  
10 given you lots of leeway. You're a question away from being  
11 cut off. Okay.

12 MR. CHOUDHURI: Your Honor, I appreciate it. What  
13 I'm trying to get in and establish is that there's been  
14 offers that the Bank of Kuwait says they haven't received.  
15 Yet they received them. The Bank of Kuwait has received  
16 them. And they've not approved them or responded --

17 THE COURT: If there is an offer and it's been  
18 made, then the offer is the best evidence, not his testimony  
19 as to what he knows. Okay.

20 MR. CHOUDHRI: Okay. I'm almost done.

21 THE COURT: You will be done soon. So ask your  
22 next question. Thank you.

23 BY MR. CHOUDHURI:

24 Q Mr. Carter, are you aware of -- so the bank has no  
25 limit on their credit bid? As we sit here today, the bank

1 can credit bid up to what amount?

2 A We can credit bid up to the full amount we're due.

3 Q Which is roughly how much?

4 A Again, roughly \$70 million.

5 Q \$70 million. So despite anybody coming to the auction,  
6 the bank can credit bid up to \$70 million? They have a  
7 right to do so?

8 A Yes.

9 Q And you don't believe that will affect the buyer pool  
10 or the marketing of the property in any way?

11 MR. FITZMAURICE: Objection, Your Honor,  
12 relevance. Mr. Carter's view as to that is not relevant to  
13 whether the bank --

14 THE COURT: I sustain the objection. Again, one  
15 more time --

16 MR. CHOUDHURI: Okay.

17 THE COURT: -- one last question. If I get a  
18 relevance objection and I sustain it, you're done.

19 BY MR. CHOUDHURI:

20 Q What does the bank intend to credit bid?

21 MR. FITZMAURICE: Objection, Your Honor.

22 THE COURT: It's not relevant, Mr. Choudhri. The  
23 issue is whether they get to credit bid, not how much that  
24 bid would be. You're done. Sit down. Thank you.

25 MR. CHOUDHURI: Thank you.

1 THE COURT: Thank you.

2 Mr. Fitzmaurice, did you have any questions based  
3 on his direct examination?

4 MR. FITZMAURICE: We do not, Your Honor. To the  
5 extent that we put on a case on this motion, we reserve the  
6 right to call Mr. Carter in that case. But we have no  
7 questions now.

8 THE COURT: All right. You may step down, and I  
9 apologize, but you're going to have to wait in court.

10 Mr. Burks, next witness.

11 MR. BURKS: Your Honor, at this time, WL -- Your  
12 Honor, may I please be excused for about ten seconds?

13 THE COURT: Sure.

14 MR. BURKS: May I be excused, please?

15 THE COURT: That's fine.

16 MR. BURKS: Whoever provided that water, I thank  
17 you.

18 Your Honor, at this time, I call to -- on behalf  
19 of 2425 WL, I call via Zoom --

20 MR. SATHER: Russell Ingram.

21 MR. BURKS: Is he on the Zoom?

22 MR. SATHER: Yes.

23 MR. BURKS: -- via Zoom, Mr. Russell Ingram, Your  
24 Honor.

25 THE COURT: All right. Mr. Ingram needs to show

1 up.

2 MR. BURKS: Well, that's what I was just trying to  
3 find out, where he is.

4 MR. INGRUM: (indiscernible) I am (indiscernible)  
5 --

6 THE COURT: Hold on one second. Mute everyone  
7 right now. Just mute everyone.

8 AUTOMATED VOICE: Conference muted.

9 THE COURT: There were connection instructions for  
10 him to follow.

11 MR. FITZMAURICE: So Your Honor, we would object  
12 and we'd ask for a proffer as to the substance of Mr.  
13 Ingrum's testimony. To be candid, we have no idea who he  
14 is.

15 THE COURT: Then I'd like to hear it from him  
16 first. So let's -- I'll rule on your objection. Is that  
17 Mr. Ingrum there? Yes?

18 MR. BURKS: Do we have audio for Mr. Ingrum?

19 THE COURT: We don't because we don't know what  
20 number he's calling in on because he didn't say his name.

21 CLERK: I'm looking.

22 THE COURT: Can you find him?

23 CLERK: I'm looking. Gary --

24 THE COURT: Let's unmute everyone and see if we  
25 can get him to --

1           AUTOMATED VOICE: Conference unmuted.

2           MR. INGRUM: All right. How about now?

3           THE COURT: Where is he?

4           CLERK: He's the very last one.

5           THE COURT: Okay. Add his name, and mute everyone  
6 else.

7           CLERK: I did.

8           THE COURT: All right. Mr. Ingram, will you  
9 please raise your right hand to be sworn?

10          MR. INGRUM: Yes, sir.

11          THE COURT: Do you swear or affirm to tell the  
12 truth, the whole truth of nothing but the truth, so help you  
13 God?

14          MR. INGRUM: Yes, sir.

15          THE COURT: All right. Go ahead.

16          MR. BURKS: Thank you, Your Honor.

17                 DIRECT EXAMINATION OF RUSSELL INGRUM

18 BY MR. BURKS:

19 Q     Mr. Ingram, I'm going to talk a little slower than I  
20 normally do because I don't know if there's a time lapse.  
21 If you do not understand the question, please state that you  
22 didn't hear it or don't understand it. All right, sir?

23 A     Yes, sir.

24 Q     Please state your name for the record.

25 A     Russell Ingram.

1 Q And how are you employed?

2 A I'm employed by CBRE, A commercial real estate company.

3 Q And what is CBRE?

4 A CBRE is the world's largest commercial real estate  
5 services company. They do everything in the real estate  
6 business all over the world.

7 Q All right. Do you have any knowledge -- and how long  
8 have you been working there, sir?

9 A I've been there 27 years.

10 Q And what do you do for CBRE, sir?

11 A My job is to sell office buildings. That's all I do.

12 Q And do you sell it in what context? In what manner do  
13 you sell office buildings, sir?

14 A I'm not sure I follow the question. Like the best  
15 example is like somebody -- like a realtor sells a house,  
16 you get hired by the owner of the house, you market the  
17 house and then you find buyers and you run the process.

18 Q All right. So you sold --

19 A Same process (indiscernible) --

20 Q Are these residential homes or are these commercial  
21 properties?

22 A Forgive me. I just do office. I was trying to give an  
23 analogy that may be easier to understand. I just sell  
24 office buildings. That's all I do.

25 Q All right, and do you sell them only on the open



1 market, that is, with realtors trying to find buyers? In  
2 what manner do you sell office buildings?

3 A I sell office buildings on a "market". There are  
4 thousands of buyers across the United States and across the  
5 world. Our job is to understand who they are and reach out  
6 to them when we have an office building that we are  
7 attempting to sell.

8 Q All right. Have you been involved in any sales of  
9 office buildings that involve bankruptcy auctions?

10 MR. FITZMAURICE: So Your Honor, I'm going to  
11 object again to the witness' testimony. It appears designed  
12 to potentially offer evidence that might conceivably support  
13 some objection by the Choudhri parties to confirmation. But  
14 the issue on this motion is whether or not the bank can  
15 credit bid. And what does this witness have to say about  
16 the claims that are between the parties which support the  
17 objection that they filed?

18 THE COURT: I'll overrule the objection. You may  
19 proceed. Go ahead.

20 MR. BURKS: So Mr. --

21 THE WITNESS: I've done one sale out of bankruptcy  
22 court.

23 BY MR. BURKS:

24 Q And in that sale, have you -- were you ever involved --  
25 in that sale, was there a credit bid involved?

1       A       There was not a credit bin.

2       Q       What do you know about credit bid, sir, experience-  
3       wise?

4               MR. FITZMAURICE:  Objection, relevance, Your  
5       Honor, to whether or not --

6               THE COURT:  I'll sustain the objection.  It's not  
7       relevant.

8       BY MR. BURKS:

9       Q       In your opinion, if there is a non-cash credit bid  
10      involved in the sales process, does that have an effect on  
11      the ultimate sales price on the open market?

12              MR. FITZMAURICE:  Objection, Your Honor, to the  
13      extent that he's being offered as an expert to give opinion  
14      evidence.

15              MR. BURKS:  No.  I'm not offering him as an  
16      expert, Judge.

17              MR. FITZMAURICE:  You --

18              MR. BURKS:  I'm offering his opinion based on 27  
19      years of selling office buildings.

20              MR. FITZMAURICE:  That's an expert opinion, Your  
21      Honor.

22              THE COURT:  I'll sustain the objection.

23              MR. BURKS:  Is your ruling that I cannot ask this  
24      witness what the effect of a credit bid is on the sales of  
25      business --

1 THE COURT: That's my ruling.

2 MR. BURKS: Buildings?

3 THE COURT: I just ruled. Thank you.

4 MR. BURKS: Nothing further.

5 THE COURT: All right. Thank you, sir. Thank you  
6 for appearing.

7 Oh, I apologize. Mr. Choudhri, do you have  
8 questions of this witness?

9 MR. CHOUDHRI: I'm going to short-circuit this.  
10 I'm not allowed to ask questions about his opinions at all?

11 THE COURT: No. You can't ask those questions.

12 MR. CHOUDHURI: Okay.

13 THE COURT: Do you have any other questions you  
14 want to ask him?

15 MR. CHOUDHRI: No. About the building?

16 THE COURT: I'm not sure questions about the  
17 building have any relevance to credit bidding.

18 MR. CHOUDHURI: The court's (indiscernible) credit  
19 bidding.

20 MR. BURKS: Who do you want now?

21 THE COURT: That's not relevant.

22 MR. CHOUDHURI: Okay.

23 THE COURT: Thank you.

24 Mr. Fitzmaurice?

25 MR. FITZMAURICE: No questions for the witness,

1 Your Honor.

2 THE COURT: All right. Thank you.

3 Next witness, Mr. Burks.

4 MR. BURKS: Your Honor --

5 THE COURT: Thank you, Mr. Ingram.

6 MR. BURKS: Your Honor, at this time I want to try  
7 -- I don't know if I'll be successful, Judge. I want to try  
8 and --

9 THE COURT: I just want you to call a witness, Mr.  
10 Burks.

11 MR. BURKS: Well, I may be able to short-circuit  
12 two of my witnesses if I'm allowed to ask the court to take  
13 judicial notice of the existence, not the truth or veracity,  
14 but the existence of certain pleadings regarding the  
15 disputes involved because it's got to be part of the record  
16 here and I'd rather just have the parties --

17 THE COURT: I'd be happy to take judicial notice  
18 that there are pleadings on file that basically are  
19 disputes. I'm happy to do that, Mr. Burks.

20 MR. BURKS: All right. May I offer them, Judge?

21 THE COURT: You may.

22 MR. BURKS: Your Honor --

23 THE COURT: Do you have an ECF number or are you  
24 going to -- I'm assuming they're on the docket so I can see  
25 them.

1           MR. BURKS: They're on the docket, but they're  
2   also on the exhibit numbers. Do you want to go -- do you  
3   want to take them off the docket, or would you like to take  
4   them exhibit by exhibit?

5           THE COURT: I just would like the record to know  
6   which exhibits I should be looking at by ECF number.

7           MR. BURKS: What are the ECF numbers?

8           THE COURT: And I know that there -- I know that  
9   there is one attached to the motion itself at ECF 353. It's  
10  an attachment to the motion.

11          MR. BURKS: But that's not all these.

12          THE COURT: So I certainly can take judicial  
13  notice of the claim objections. I can also take judicial  
14  notice of the adversary proceedings.

15          MR. BURKS: Your Honor, I -- yes, Your Honor. So  
16  I'm offering you -- I'm requesting that you take judicial  
17  notice of Proof of Claim Number 13, which is 499-2, Proof of  
18  Claim Number 14, which is --

19          THE COURT: Whoa, whoa, whoa, whoa. We've got to  
20  just slow down because I'm going to write it down. So,  
21  proof of claim what?

22          MR. BURKS: Proof of Claim Number 13.

23          THE COURT: Thirteen.

24          MR. BURKS: And Proof of Claim Number 14, which is  
25  499.

1           THE COURT: Well, if they're proof of claim -- if  
2 they're on the claims docket as 13 and 14, that's fine. I  
3 can take judicial notice on that, if they've been filed and  
4 they're pending.

5           MR. BURKS: Yes. Your Honor, Amended Objection to  
6 Proof of Claims 13 and 14.

7           THE COURT: At?

8           MR. BURKS: I believe it's 499-4. Is it, Reese?

9           MR. BAKER: Where's the (indiscernible) where I  
10 was writing down some of these ECF numbers? This is a  
11 little embarrassing. I need the ECF numbers.

12          MR. BURKS: 499-4. I was intending to present  
13 them on the screen as we rolled through it.

14          THE COURT: Fine. You can do it if you want to.  
15 I'm more than happy to let them connect and project them if  
16 you want to.

17          MR. BURKS: That would be easier.

18          THE COURT: All right. So bear with me one  
19 second. Where do you want to connect from?

20          MR. BURKS: Mr. Baker, where would you like to  
21 connect from? Despite my fumbling and my apologies to  
22 counsel and my slight embarrassment, Judge, this will be  
23 faster than the two witnesses --

24          THE COURT: That's fine. Go ahead.

25          MR. BURKS: Yeah. But that doesn't tell me what

1 ECF number it is.

2 THE COURT: (indiscernible) you're not going to be  
3 tell what it is.

4 MR. BAKER: That's 499-2.

5 MR. BURKS: Proof of Claim Number 13, which is  
6 499-2, Your Honor. Next --

7 THE COURT: If it's on the claims register, why  
8 don't we just do it by the claims register? Claim 13.

9 MR. BURKS: All right, Your Honor.

10 THE COURT: Okay. Thank you.

11 MR. BURKS: Claim 14 on the claim register.

12 THE COURT: All right. I'll take that one, too.  
13 Thank you.

14 MR. BURKS: Amended Objection to Claims 13 and 14  
15 on the claim register.

16 MR. FITZMAURICE: I think that'd be on the docket.

17 MR. BURKS: Reese? I can't tell if they're on the  
18 docket or not.

19 THE COURT: Let's look --

20 MR. FITZMAURICE: Your Honor, I think the amended  
21 objection --

22 THE COURT: Bear with me for one second.

23 MR. FITZMAURICE: -- is ECF 284.

24 THE COURT: Bear with me for one second.

25 MR. BURKS: I need ECF numbers for Numbers 1

1 through 11.

2 MR. BAKER: Yeah, 500 -- Your Honor, this amended  
3 objection --

4 THE COURT: Bear with me, Mr. Baker.

5 MR. BAKER: I'm sorry. I'm sorry.

6 THE COURT: There's the claim register. I think  
7 that's what you want.

8 MR. BURKS: It is, Judge. Success. Can I start  
9 over with --

10 THE COURT: Go ahead. Go ahead.

11 MR. BURKS: You know, I'd ask this court to take  
12 judicial notice of the contents, but not the truth or  
13 veracity of the following documents: Proof of Claim 13-1,  
14 Objection to claim number 13 and 14, at 270, Objection to  
15 claim 13 and 14, at 284, Proof of Claim 14-1. I also want  
16 to ask the court to take judicial notice of the second  
17 amended original petition in Adversary Case Number 2024-  
18 2716. This is our Exhibit Number 6, which would be at --

19 MR. BAKER: 499-6 on the docket.

20 MR. BURKS: 499-6 on the docket, Your Honor. I'd  
21 ask the court to take judicial notice of the amended -- the  
22 amended complaint for equitable subordination and damages  
23 filed by 2425 WL. It's our Exhibit Number 7. And it's at  
24 Docket Number 499-7. I'd ask the court to take judicial  
25 notice of the amended petition in Adversary 2023-2274 which



1 is at ECF Docket Number 499- --

2 MR. BAKER: Eight.

3 MR. BURKS: -- 8. I'd ask the court to take  
4 judicial notice of the motion for entry in order authorizing  
5 creditor to pursue estate claims, specifically a lender  
6 liability claim, which is at our Exhibit Number 9, ECF  
7 499 --

8 MR. BAKER: It should be nine.

9 MR. BURKS: Is it nine?

10 MR. BAKER: Let me check. It is.

11 MR. BURKS: 499-9, correct, Mr. Baker?

12 I'd ask the court to take judicial notice of the  
13 petition in Adversary Number 23-60036. That's at ECF number  
14 our Exhibit 10. 499-10. That leaves me only two more  
15 exhibits that I want to try and get in, Your Honor, and I  
16 appreciate -- with humility and a bit of embarrassment, I  
17 appreciate your patience in offering these for you to take  
18 judicial notice. So taken or not, Your Honor?  
19 (indiscernible). I'm actually waiting on you, Your Honor.  
20 Have you taken judicial notice of these?

21 THE COURT: Oh, I thought you had more, that you  
22 had more to go?

23 MR. BURKS: I have two more to go, but I don't  
24 think counsel's going to want me to offer them. Actually,  
25 why don't we give it a whirl.

1           THE COURT: Let's just do this. I'm going to take  
2       judicial notice of the pleadings that are on file, but not  
3       the facts that are in them. Proof of Claims 13-1 and 14-1  
4       and all objections thereto that are reflected on the claims  
5       register as well as ECF 499-6, 499-7, 499-8, 499-9 and 499-  
6       10. All right. Those I've taken judicial notice of, and  
7       you can move to your next two that you think are going to be  
8       disputed.

9           MR. BURKS: The next two are June 11 -- the  
10      Exhibits 11 and 20 -- or 10 and 11 -- 11. Exhibit 11.

11           Mr. Baker, will you put that up for the  
12      (indiscernible) on the screen.

13           THE COURT: So are you asking me to take judicial  
14      notice of 499-11?

15           MR. BURKS: Well, I'd like to offer it for limited  
16      purposes and see if it draws an objection. If it doesn't  
17      draw an objection, I won't need -- I may not need an entire  
18      witness, Your Honor. If it draws an objection, I'll need  
19      the witness.

20           THE COURT: Okay. Go ahead.

21           MR. BURKS: I offer into evidence Exhibit Number  
22      11.

23           Mr. Baker, will you put that on the screen,  
24      please.

25           Your Honor, what I'm intending to do, if I can

1 find it, if I can find it, what I intend to do is offer into  
2 evidence a letter, which, not for the purpose of whether or  
3 not there's an offer --

4 THE COURT: I need to see it.

5 MR. BURKS: Yeah, you do. May I have a four-  
6 minute recess, Judge?

7 THE COURT: I'll just sit here. Let's just do  
8 this quickly.

9 MR. BURKS: Yes, Your Honor.

10 THE COURT: Thank you.

11 MR. FITZMAURICE: Your Honor, while they're doing  
12 that, and we don't object to the request for judicial notice  
13 of those exhibits, not for their contents, not for the  
14 truth.

15 THE COURT: They're just --

16 MR. FITZMAURICE: As a matter of sort of fairness  
17 and completeness, can we similarly ask you to take judicial  
18 notice of the document at exhibit -- sorry, at ECF Number  
19 430, which is the bank's response to the amended claim  
20 objection.

21 THE COURT: Let's just do this. For completeness  
22 purposes as well as fairness, any sort of response to any of  
23 the pleadings that I just took judicial notice of, I also  
24 will take judicial notice of.

25 MR. FITZMAURICE: For purposes of the -- I

1 apologize, Your Honor, for pushing my luck here. But for  
2 purposes of the record, that would also include the bank's  
3 motion to dismiss the amended complaint for (indiscernible)  
4 subordination filed by 2425 WL.

5 THE COURT: Any sort of response will be  
6 (indiscernible) --

7 MR. FITZMAURICE: Thank you very much, Your Honor.

8 MR. BURKS: Nobody asked me. They didn't have to,  
9 but I had no objection to that.

10 THE COURT: Doesn't make any difference. You  
11 could have objected all you wanted. I'd have overruled you.  
12 Go ahead.

13 MR. BURKS: I thought you might. Judge, we filed  
14 a supplemental exhibit list at 95 with three documents.  
15 Will somebody please put it up on the screen.

16 MR. SATHER: 517-3.

17 MR. BURKS: 517-3. While I'm waiting for that, I  
18 confess that I've never seen this fancy seal on the screen,  
19 Judge.

20 THE COURT: Apparently you're not connected or you  
21 would be showing up because you're -- the right cable is  
22 connected to the screen. Whoever thinks they're connected,  
23 they're not. That's the reason you're seeing the seal.

24 MR. BURKS: That's what I was thinking. Yeah.  
25 (indiscernible) so it's Exhibits 93, 94, 95. Your Honor,

1     this is Exhibit 93. I offer not for --

2             THE COURT: Again, not by exhibit number, by ECF  
3     number, because everything's electronic. What ECF number is  
4     it? I can see it, but you need to put it on the record.  
5     It's right in front of you, Mr. Burks.

6             MR. BURKS: Your Honor, at this time I offer into  
7     evidence Document Number 517-3 for the sole purpose of  
8     whether the debtor or any related entity, or Mr. Choudhri or  
9     any related enemy has tendered \$700,000 to the trustee for  
10    the purpose of buying the NBK note. I am not offering it to  
11    argue that they have the right to do so or that they don't  
12    have the right to do so, or that the trustee had a duty or  
13    did not have a duty to accept it. I'm not offering it in  
14    any way to say that that prejudices any rights of NBK. I am  
15    offering it to establish the scope of the dispute. And then  
16    in regards to the dispute, A, these documents were submitted  
17    to the Chapter 11 trustee.

18            THE COURT: So let me just cut to the chase. You  
19    want to have me admit it for the limited purpose of the  
20    funds were tendered?

21            MR. BURKS: The emails with the copy of that check  
22    were submitted. Yes.

23            THE COURT: All right. So let me hear if there  
24    are any objections.

25            MR. FITZMAURICE: There are, Your Honor.

1           THE COURT: That's fine. Then we need a witness.  
2   I mean, I can't do it by stipulation. Call your next  
3   witness.

4           MR. BURKS: I tried. At this point -- at this  
5   point, Judge, I call -- I'm mindful of your previous rulings  
6   on objections regarding relevancy. May I have 60 seconds?  
7   That's all I --

8           THE COURT: Sure.

9           MR. BURKS: Your Honor, at this time, I call Mr.  
10   Jerry Alexander.

11          THE COURT: Mr. Alexander, you want to come  
12   forward, please?

13          MR. ALEXANDER: Yes, sir.

14          THE COURT: If you'll step to the microphone.

15          Mr. Burks, if you'll step aside so I can swear him  
16   in. Then you can step back. Thank you.

17          Mr. Alexander, please raise your right hand to be  
18   sworn. Do you swear or affirm to tell the truth, the whole  
19   truth and nothing but the truth, so help you God?

20          MR. ALEXANDER: I do.

21          THE COURT: All right. Please be seated, sir.

22          MR. FITZMAURICE: Your Honor, we object to the  
23   calling of the witness. We don't think he has any relevant  
24   testimony to offer. Our best guess is he's going to be --  
25   he's testifying about his view as to the merits of certain

1     claims.  That's not relevant to whether or not the bank  
2     should be allowed to credit bid tomorrow.

3             THE COURT:  All right.  Thank you.

4             I'll let you begin your testimony, and then if he  
5     wants to make an objection, go ahead.

6             MR. BURKS:  Thank you, Your Honor.

7             DIRECT EXAMINATION OF JERRY ALEXANDER

8     BY MR. BURKS:

9     Q     Sir, will you please state your name for the record?

10    A     My name is Jerry Alexander.

11    Q     And what do you do for a living?

12    A     I'm an attorney.

13    Q     What kind of law do you practice?

14    A     I practice business litigation.

15    Q     What type of business litigation?  All types or --

16    A     All types.  For the last 10 or 15 years, I've had a lot  
17    of cases where I represented trustees in bankruptcy.

18    Q     All right.  Mr. Alexander, have you ever looked at or  
19    examined a lender liability cause of action?

20    A     Yes.

21    Q     In this particular case, are you aware of any dispute  
22    or alleged lender liability cause of action?

23    A     Yes.

24             MR. FITZMAURICE:  Objection, relevance, Your  
25    Honor.

1 THE COURT: I'll overrule the objection.

2 BY MR. BURKS:

3 Q And in this case, have you examined facts or evidence  
4 or allegations on any party for a lender liability cause of  
5 action against NBK?

6 MR. FITZMAURICE: Objection, Your Honor.

7 THE WITNESS: Yes.

8 THE COURT: Okay. Hold on.

9 THE WITNESS: Excuse me.

10 THE COURT: You're a lawyer. You know when he  
11 objects, you need to stop.

12 Go ahead.

13 MR. FITZMAURICE: Objection on relevance grounds.  
14 Also on compound grounds. And also I think that the debtor  
15 is going to need to explain what facts it is that he  
16 supposedly reviewed to form -- again, there's a generic  
17 objection to this entire (indiscernible) --

18 THE COURT: Mr. Burks, lay a better predicate.

19 MR. BURKS: I'm going slowly, and --

20 THE COURT: Okay. Then go slower. Thank you.

21 MR. BURKS: Yes, Your Honor.

22 BY MR. BURKS:

23 Q In this case, have you looked at facts regarding  
24 allegations of (indiscernible)?

25 A Yes.



1 Q What facts have you looked at?

2 A I reviewed emails. I reviewed documents. I spoke to  
3 people, and I reviewed the lawsuit that led to the  
4 settlement agreement. I reviewed the settlement agreement  
5 and I reviewed email traffic and I talked to Mr. Choudhri,  
6 of course, and I talked to Mr. Wetwiska and I talked to  
7 other people that worked with Mr. Choudhri at various  
8 periods of time.

9 Q And when you say you looked at the settlement  
10 agreement, are you referring to the settlement agreement  
11 that was mentioned by counsel for NBK in his opening  
12 statement?

13 A Yes, sir.

14 Q What settlement agreement was that?

15 A The settlement agreement, there was a lawsuit filed by  
16 Mr. Wetwiska, and they settled that lawsuit. And the way  
17 they settled that lawsuit was they said that they could buy  
18 the note or the property for a certain amount of money.

19 Q And did it also provide for any releases or any  
20 consideration towards NBK? I mean, let's be fair. If  
21 you're going to describe part of it --

22 A I'm sorry? What --

23 Q What else did the settlement agreement have in it?

24 A The usual settlement agreement things. There are  
25 releases and things like that.

1 Q Okay, and in your review of the settlement agreement,  
2 in your conversations, who else did you talk to other than  
3 Mr. Choudhri?

4 A I talked to Mr. Wetwiska. I talked to people that  
5 worked for Mr. Choudhri. I talked to Azeemeh Zaheer. I  
6 talked to people that worked for Mr. Choudhri during the --  
7 during the time that no longer worked for him. And a couple  
8 of those I talked to under oath in a lawsuit, in a  
9 proceeding.

10 Q And did you determine that, at least from Mr. Choudhri  
11 or Mr. Choudhri's entities' perspective, that there was a  
12 lender liability dispute? I'm not asking you to comment on  
13 it, good or bad, but is there a dispute?

14 A Yes, sir.

15 Q Did you talk to anyone else about your opinions on the  
16 dispute?

17 A Yes sir.

18 Q Who?

19 A I talked to lawyers in my law firm about whether or not  
20 they thought it was a good case. I talked to other lawyers  
21 that are bankruptcy lawyers about whether or not they  
22 thought it would be a good case, those kinds of people.

23 Q And in fact how much time have you spent evaluating, to  
24 your satisfaction or in your opinion, this case? How long  
25 have you spent evaluating?

1 A There was -- I was representing -- I was representing  
2 Mr. Choudhri and some of his entities --

3 Q I'm going to re-ask the question.

4 A Okay.

5 Q How long have you spent evaluating it, sir?

6 A Evaluating this case specifically, over 100 hours.

7 Q So I'm going to ask it again because I'm not being  
8 clear, and I apologize. How much time have you spent  
9 examining the lender liability dispute that we've  
10 identified, at least Mr. Choudhri or his companies  
11 (indiscernible) --

12 MR. FITZMAURICE: Objection, Your Honor. What's  
13 the relevance to how much time Mr. Alexander has spent?

14 THE COURT: I'll overrule the objection.

15 Go ahead, Mr. Burks.

16 THE WITNESS: I would have spent over 100 hours  
17 doing that.

18 BY MR. BURKS:

19 Q All right. Did you talk to the Chapter 7 trustee about  
20 it? Excuse me. I'll retract and ask again.

21 Did you form an opinion as to the validity of the  
22 dispute?

23 A Yes.

24 Q All right. Have you offered to anybody to represent  
25 plaintiffs in this dispute against NBK?

1 A I offered --

2 Q Yes or no, sir.

3 A Yes. I'm confused by the word plaintiff's counsel. I  
4 don't --

5 Q Well, any plaintiffs in the lawsuit are whoever they  
6 are.

7 A Yes, I have.

8 Q And did you state whether you would -- the terms on  
9 which you would handle the action?

10 A Yes.

11 MR. FITZMAURICE: Objection, Your Honor.

12 MR. BURKS: I'll --

13 MR. FITZMAURICE: If there's a document that  
14 establishes all of this, that would be helpful for us to  
15 look at. And again, I'm struggling with the relevance of  
16 Mr. Alexander's views as to -- as counsel for the debtor,  
17 who he's acknowledged he represents Mr. Choudhuri, what his  
18 views of the dispute between the parties -- what relevance  
19 that has as to whether or not the bank should be allowed to  
20 credit bid.

21 THE COURT: I'll overrule the objection except as  
22 to the document.

23 Mr. Burks, if there is a document that evidences  
24 that he mentioned, then I'd like to see that. Go ahead.

25 BY MR. BURKS:

1 Q Is there a document in writing which you made anybody  
2 an offer to represent any plaintiff in a lender liability  
3 complaint versus National Bank of Kuwait?

4 A I believe I wrote a letter to the counsel for the  
5 trustee that said I would take it on a contingent fee basis.  
6 But I don't think I talked about percents or anything else.  
7 I decided I would be willing to do it on a contingent fee  
8 basis at no cost to the estate.

9 MR. BURKS: All right (indiscernible) find that  
10 document.

11 MR. BAKER: It should be 499-83.

12 MR. BURKS: Your Honor, we're about to put up on  
13 the screen Docket Number 499 -- what?

14 MR. BAKER: Eighty-three.

15 MR. BURKS: Dash 83, and I'm looking at that  
16 shield again. Still looking at the shield. Can we go to  
17 the bottom of it, please, so we can -- just slowly scroll so  
18 we can identify what this is. Scroll down so we can see who  
19 signed it, please, and then I want to go back up to the top,  
20 Mr. Baker.

21 MR. BAKER: Go up to the top?

22 MR. BURKS: Well yeah (indiscernible) sending the  
23 letter.

24 BY MR. BURKS:

25 Q Mr. Alexander, are you looking at this document?

1 A Excuse me?

2 Q Are you looking at this document?

3 A Yes. It's a letter dated April 3, 2024 from me to R.J.  
4 Shannon, Esquire and Kyung S. Lee, Esquire.

5 Q A moment ago, we went to the last page where there was  
6 a signature. Did you see that?

7 A Briefly.

8 Q Is that your signature?

9 A I'm sure it is.

10 Q Is this your letter?

11 A Yes.

12 Q All right. Are these the conditions and the  
13 opinions -- I'll start again.

14 Are these the opinions -- do these reflect the opinions  
15 you have regarding this lawsuit or this cause of action?

16 A Some of them. It has -- it says herein (indiscernible)  
17 pertinent facts and references to exhibits. There are --  
18 there are others I keep. I keep finding things out or  
19 hearing things.

20 MR. FITZMAURICE: Objection, Your Honor, lacks  
21 foundation as to things he keeps finding out and hearing.

22 THE COURT: I'll sustain the objection. Thank  
23 you.

24 BY MR. BURKS:

25 Q Is this the letter you sent to the Chapter 11 trustee?

1       A       Yes.

2               MR. BURKS: All right. Your Honor, I offer it  
3 into evidence, not for the veracity of the cause of action,  
4 but for the fact that Mr. Alexander has the opinion set  
5 forth in this letter regarding the dispute.

6               MR. FITZMAURICE: Your Honor, we'd object to the  
7 admission even for that limited purpose. Mr. Alexander's  
8 opinions as to the dispute are not relevant to whether or  
9 not there is in fact a bona fide dispute between the parties  
10 as identified in the motion --

11              THE COURT: Bear with me. I'm more worried about  
12 the fact that it shows there's 175 pages to that exhibit at  
13 the top of the ECF.

14              MR. FITZMAURICE: And we've looked at two of them.

15              MR. BURKS: I'm just offering Pages 2, 3 and 4.  
16 Just the letter itself, Your Honor. I'm not worried about  
17 the exhibit. I'm trying to establish the scope of the  
18 dispute.

19              THE COURT: Well, bear with me one second. Two  
20 through six is what you are offering?

21              MR. BURKS: Yes, Judge.

22              THE COURT: Okay. So let me hear objections to  
23 Pages 2 through 6, if you have any, Mr. Fitzmaurice.

24              MR. FITZMAURICE: Your Honor, I just want to  
25 briefly look to make sure I understand what those pages are

1 really quickly. So it's the -- it's the same objections,  
2 Your Honor. Mr. Alexander's view as to the merits of any  
3 dispute between the parties.

4 THE COURT: I agree as to the merits. I don't  
5 think his opinion as to merits makes any difference to me.

6 MR. FITZMAURICE: And the -- and the --

7 THE COURT: But as far as the fact that he sent  
8 the letter, I'll admit 499-83, only Pages 2 through 6 for  
9 that limited purpose.

10 (Trial Exhibit 499-83.1-6 entered into evidence)

11 THE COURT: Mr. Burks, you may call your next  
12 witness.

13 MR. BURKS: Actually, at this point, I pass the  
14 witness.

15 THE COURT: All right. Thank you.

16 MR. BURKS: I'm not going to try -- I'm not going  
17 to try the lawsuit today.

18 THE COURT: Mr. Choudhri, do you have any  
19 questions of this witness? No? Is that a no?

20 MR. CHOUDHRI: No, Your Honor.

21 THE COURT: Thank you.

22 Mr. Fitzmaurice?

23 MR. FITZMAURICE: Briefly, Your Honor.

24 THE COURT: Go ahead. Do you want to project?

25 MR. FITZMAURICE: Oh, I'm sorry, Your Honor. Yes.



1 THE COURT: I have to switch every time we move.

2 CROSS-EXAMINATION OF JERRY ALEXANDER

3 BY MR. FITZMAURICE:

4 Q So Mr. Alexander, good afternoon, or good morning,  
5 rather. I'm showing you what -- the letter that you were  
6 just looking at here.

7 A Yes, sir.

8 Q Do you recognize that?

9 A Good morning to you. Thank you.

10 Q And I'm going to scroll down your bullet point list of  
11 items. I can go as fast or as slow as you want, but I'm  
12 going to scroll through them, and then I'm going to ask you  
13 a question. I'll tell you now what that question is going  
14 to be so you have it in your mind when you look. And it is,  
15 is it that all of these events occurred prior to August of  
16 2022. So the first bullet, that references events that  
17 occurred in January 2021; is that correct?

18 A That's correct. That would be before August 2022.

19 Q And then there's something at the end of that bullet  
20 point of July 29, 2021?

21 A That would be before August 2022.

22 Q And then the second bullet, August of 2021?

23 A Yes, sir.

24 Q And then this bullet here that's at the bottom of the  
25 page, it references an email that was sent in August of

1 2021. Do you see that?

2 A Yes, sir.

3 Q Do you see in this bullet here, there's a reference to  
4 events that occurred in September of 2019?

5 A Yes, sir.

6 Q In this bullet here, September of 2021. Do you see  
7 that?

8 A Yes.

9 Q And then July 2nd of 2022?

10 A July 2nd of 2022 is before August.

11 Q Okay, and then there's reference in this next bullet  
12 about August 22, 2022?

13 A Yes.

14 Q Do you see that?

15 A Yes.

16 Q Do you know if that's the date that the parties entered  
17 into the settlement agreement?

18 A That's the settlement agreement date. Yes, sir.

19 Q Okay, and was the settlement agreement one of the  
20 documents that you reviewed?

21 A I believe it was.

22 Q I have too many PDFs open (indiscernible) --

23 A It's fine.

24 Q So I'm referring to a document that's been filed at ECF  
25 Number 508-7. I'll scroll through it. I'll scroll through

1     it, Mr. Alexander. But my question is, do you recognize  
2     this to be the settlement agreement that you reviewed?

3     A     I believe it could be that, yes.

4     Q     Okay, and looking here at the first paragraph, the  
5     parties to the settlement agreement are the National Bank of  
6     Kuwait, New York Branch. Do you see that?

7     A     Yes.

8     Q     And debtor, Galleria Owner?

9     A     Yes.

10    Q     Do you know who Naissance Galleria is?

11    A     Yes.

12    Q     Who's that?

13    A     Naissance Galleria is a company that was a mezzanine  
14    lender to Galleria 2425 Owner, LLC.

15    Q     Well, they were the mezzanine lender to the debtor's  
16    owner, correct?

17    A     Yes. Yes.

18    Q     And then the last party to the settlement agreement is  
19    Mr. Choudhri, individually?

20    A     Yes, sir.

21    Q     When you reviewed the settlement agreement, did you  
22    agree -- sorry. Did you review the terms of the agreement  
23    between the parties?

24    A     Yes, I found it very interesting.

25    Q     And as part of your review, did you review Section

1 3.1(a), where the debtor and Mr. Choudhri acknowledged the  
2 indebtedness that they owed to the bank?

3 A I did see that.

4 Q Okay, and did you see that they acknowledged that that  
5 debt was owed without defense, setoff, claim, counterclaim  
6 or deduction of any nature whatsoever, all of which were  
7 expressly waived?

8 A Yes, sir. That's fairly typical language.

9 Q Okay. But you acknowledge that that's what, in fact,  
10 the debtor and Mr. Choudhri did in this agreement?

11 A I agree that that's what the words in the agreement  
12 say.

13 Q And in Section 3.1(b), the debtor and Mr. Choudhri  
14 acknowledged that there were existing defaults under the  
15 loan agreement?

16 A That's what the agreement says.

17 Q Right, and that there were no defenses, setoffs,  
18 counterclaims, et cetera to those defaults?

19 A The agreement also says that.

20 Q And the agreement also says that if -- that the bank  
21 had the right to foreclose?

22 A It says that in (c). Yes.

23 Q Yes. Thank you. Now, the settlement agreement allows  
24 the bank -- I'm sorry, allows Mr. Choudhri to make a payment  
25 to the bank of \$27 million; is that right?

1 A It does.

2 Q Okay, and that payment was never made, was it?

3 A I don't think it was, no.

4 Q Okay, and in Section (g), the settlement agreement  
5 calls for any active litigation to be -- against the bank to  
6 be dismissed with prejudice; is that right?

7 A Yes.

8 Q Section 4.1 of the settlement agreement contains  
9 releases of the bank --

10 A Yes, sir.

11 Q -- by Mr. Choudhri and the debtor and the mezzanine  
12 lender; is that right?

13 A Yes. Again, but I expected that language to be in the  
14 agreement.

15 Q And in fact it is there?

16 A It is there.

17 Q Okay. In Section 5.3, the debtor and Mr. Choudhri  
18 agreed that if they didn't pay the amounts that were due  
19 under the settlement agreement, that the bank had the right  
20 to foreclose. Isn't that right?

21 A Well, 5.3 says a lot of things. Whatever it says,  
22 that's what's in the agreement.

23 Q Was this part of your review that -- was it part of  
24 your review that the debtor agreed that if they didn't pay  
25 the amounts that were owed, the bank would foreclose?

1 A Yes sir, it was part of my review --

2 Q And did they --

3 A -- (indiscernible) expected release language, all the  
4 other things to be in (indiscernible) --

5 Q And it was also part of your review that the debtor and  
6 Mr. Choudhri covenanted that they will not interfere with  
7 the bank's ability to foreclose following a default under  
8 the settlement agreement, right?

9 A I don't see that.

10 Q Let me see if I can help you. Section 5.3.

11 A I see that.

12 Q The first sentence following the bold text, following  
13 any settlement default, each of Galleria, Choudhri and  
14 Naissance covenant and agree that they shall not seek to  
15 restrain or otherwise hinder, delay, frustrate or impair  
16 NBK's efforts to (i) foreclose. The text continues. But  
17 you can read that.

18 A It says that.

19 Q Okay, and that was all part of the review that you  
20 undertook?

21 A It absolutely was.

22 Q Okay.

23 A And like I said, I expected terms like that to be in  
24 this agreement.

25 Q All right, and you've previously represented Mr.

1 Choudhri in litigation against the bank, right?

2 A Either him or one of his entities. I'm not sure. But,  
3 yes. Yes, I have. Or maybe I haven't. I don't  
4 (indiscernible) --

5 Q So I'm going to direct your attention, Mr. Alexander,  
6 back to the letter.

7 A Yes, sir.

8 Q At 499-83.

9 A Yes.

10 Q Your second paragraph, I have previously represented  
11 Mr. Choudhri in dispute with the bank.

12 A Yes.

13 Q Okay.

14 A I think -- I think that's right. I was confused if it  
15 was him or one of his entities.

16 Q Thank you, Mr. Alexander. I apparently have one more  
17 question.

18 THE COURT: That's fine.

19 THE WITNESS: You can ask it.

20 BY MR. FITZMAURICE:

21 Q Mr. Alexander, I'm referring back to -- I'm referring  
22 back to the confidential settlement agreement which is at  
23 ECF 508-7, in particular directing your attention to Section  
24 9.8 of that agreement.

25 A Yes, sir.

1 Q Is this part of the review that you undertook?

2 A It is. But I was not the --

3 Q You were not the counsel who was involved?

4 A I was not.

5 Q But in fact, the debtor and Mr. Choudhri and the

6 mezzanine lender, they all had counsel? They all

7 acknowledged here that they had counsel?

8 A Yes, and I've spoken with them.

9 Q And that was Mr. Wetwiska from Akin Gump? That was --

10 A Mr. Wetwiska. Yes.

11 MR. FITZMAURICE: Nothing further, Judge. Thank

12 you.

13 THE COURT: All right. I believe --

14 MR. BURKS: Judge --

15 THE COURT: Yeah.

16 REDIRECT EXAMINATION OF JERRY ALEXANDER

17 BY MR. BURKS:

18 Q Mr. Alexander, while the door just got opened kind of  
19 wide. But I will not ask you to try this case today sitting  
20 on the stand. But I do have a few questions, sir. All  
21 right.

22 A Yes, sir.

23 Q So all the points that counsel just asked you, you  
24 considered them before issuing your letter which has been  
25 admitted into evidence on limited purposes, correct?



1     A     Oh, absolutely. Absolutely. All of them. Every  
2     lender -- every lender has documents that say things like  
3     those.

4     Q     Have you brought lender liability actions before?

5     A     Yes.

6                 MR. FITZMAURICE: Objection, relevance, Your  
7     Honor.

8                 THE COURT: Go ahead. What's your response to  
9     that?

10                MR. BURKS: The relevance is that by reading -- by  
11     asking this witness at least 14 specific questions regarding  
12     this settlement agreement, I have now -- should have leeway  
13     to explain why he still thinks there's a cause of action.

14                THE COURT: I'll overrule the objection. Go  
15     ahead.

16     BY MR. BURKS:

17     Q     Mr. Alexander, you've read these points. You've  
18     considered these points that were asked of you, correct?

19     A     Yes.

20     Q     So have you tried lender liability actions before?

21     A     Yes, sir.

22     Q     Have you succeeded?

23                MR. FITZMAURICE: Objective, relevance.

24                THE COURT: I'll overrule the objection.

25     BY MR. BURKS:

1 Q Have you succeeded?

2 A Yes, sir.

3 Q In those actions that you succeeded in, were there  
4 these types of releases and settlement agreements involved?

5 A There were agreements that were more onerous than this  
6 when it came to that.

7 Q All right, and you set forth in your letter your  
8 opinion as to why there is a good lender liability action  
9 against the National Bank of Kuwait, correct?

10 A Part of my -- part of my opinion.

11 Q All right.

12 A Part of it.

13 Q And some of the actions occurred after the settlement  
14 agreement, correct?

15 MR. FITZMAURICE: Objection.

16 THE WITNESS: Most of them. Most of them.

17 THE COURT: Hold on. There's been an objection.  
18 What's the objection?

19 MR. FITZMAURICE: There's nothing in the letter  
20 about anything that happened --

21 THE COURT: I'll sustain the objection.

22 BY MR. BURKS:

23 Q Based on --

24 THE WITNESS: I'm not sure that that's correct.

25 But --

1 MR. BURKS: He's -- the judge has sustained the  
2 objection, sir. We're both attorneys.

3 THE COURT: If you want to look at the letter  
4 again. I just sustained the objection as to the form of the  
5 question. I didn't see anything. If you want to bring the  
6 letter back up, feel free.

7 MR. BURKS: I didn't understand the scope of your  
8 ruling. I apologize, Judge, for putting words in your  
9 mouth. I apologize.

10 THE COURT: I apologize.

11 MR. BURKS: The witness cannot control the scroll,  
12 can he, Your Honor?

13 THE COURT: Can the witness scroll it down?

14 MR. BURKS: If you will state what you need to do  
15 to review, what pages, just tell us where you need to go.

16 BY MR. BURKS:

17 Q And the question is, in your letter, are there any  
18 allegations or acts which occurred after the date of the  
19 settlement agreement.

20 A There -- let me see. Hold it right here. Yes. If you  
21 look at the -- there's a --

22 Q The answer is yes, and what are those, sir? Please  
23 identify them, in your letter though.

24 A Well, the first -- the second bullet point on the page  
25 that I'm looking at, and I don't know what page it is

1 because I didn't see the top of it. Page 4, the second  
2 bullet point starts in with all of those events happened  
3 after August 22, 2022. Excuse me, third bullet point. NBK  
4 has prevented debtor's successful performance under any and  
5 all agreements it has with NBK, including the confidential  
6 settlement agreement.

7 Q What else?

8 A Confidential settlement agreement permitted a timeframe  
9 which the debtor could sell the 2425 building and debtor was  
10 successful in receiving a hard letter of intent dated  
11 January 17, 2023 to purchase the building from Caldwell  
12 Soames. A true and correct copy of that letter of intent is  
13 attached hereto as Exhibit 2.

14 Q What else after the settlement agreement?

15 A Again, these negotiations were ongoing. NBK took  
16 actions. They've interfered with the continuation and the  
17 closing of that transaction, including issuing a notice of  
18 foreclosure on March 29, 2023, in breach of the confidential  
19 settlement agreement, which debtor believes was done  
20 intentionally to prevent the sale.

21 Q Anything else?

22 A The sale would have cleared the Bank of Kuwait debt as  
23 it stood and at the time and left great value to the other  
24 plaintiffs. The debtor believes the Bank of Kuwait  
25 recognized that greater value and wanted to take it for

1     itself by foreclosure in a loan-to-own gambit.

2     Additionally, NBK posted for foreclosure in 2023 early and  
3     against the extended grace period that the state court had  
4     given to debtor, which chilled the bidding process and the  
5     interest in the 2425 building completely. Debtor believes  
6     that NBK knew this would prevent the sale and did it on  
7     purpose to prevent the debtor from successfully selling the  
8     property and paying off the loan so NBK could foreclose and  
9     become the owner of the building. The debtor also made the  
10    following substantial payments the NBK's consideration to  
11    allow it a fair opportunity to sell the building.

12    \$801,509.42, August 27, 2022; \$80,000 paid by the debtor to  
13    NBK on April 18, 2023; \$80,000 paid by the debtor to NBK on  
14    May 10, 2023.

15    Q     Sir, let me interrupt you. Based on these things that  
16    you believe, in your opinion, occurred after the settlement  
17    agreement was executed, you then list various causes of  
18    action that you believe exist; is that correct?

19    A     Yes, sir.

20                 MR. FITZMAURICE: So Your Honor, object to this  
21    testimony, at least in part, on hearsay grounds. The claim  
22    is that the bank somehow interfered with an agreement that  
23    the debtor had with Paul Caldwell and Caldwell Soames. He's  
24    on their list. They could call him and talk to him about  
25    whether or not any of that is true. But instead they're

1 offering this hearsay testimony from a witness who has no  
2 actual firsthand knowledge of any of those facts to try to  
3 prove, despite the fact of what they've said earlier about  
4 the limited purpose for which this is offered, they're  
5 actually trying -- offering this testimony and this evidence  
6 to try to establish to Your Honor that all of these things  
7 are in fact true.

8 MR. BURKS: Response?

9 THE COURT: Here's my ruling. Okay. It was  
10 admitted for a limited purpose. His knowledge or lack of  
11 knowledge or what he specified to you goes to weight. I've  
12 heard it. Whether it's true or not is a totally different  
13 issue. So --

14 MR. BURKS: We're not trying the case today.

15 THE COURT: So go ahead. I'll overrule that  
16 objection.

17 BY MR. BURKS:

18 Q So why would you take a case like this,  
19 (indiscernible), why would you take this on a contingency  
20 basis?

21 A Because I can win it. And it's not a complex case.  
22 You want to see a complex case? Look at the Bailey Tool  
23 case.

24 Q For what case?

25 A The Bailey Tool case. Bailey Tool v. RBC.

1 Q I'm going to cut you off on that because I don't know  
2 why that's relevant. But I understand you're saying for you  
3 it's not complex.

4 A It's not. It's not complex and these documents are not  
5 difficult.

6 Q You have a damage model for this?

7 A Yes.

8 Q What is it?

9 A Well --

10 MR. FITZMAURICE: Objection, Your Honor. Do we  
11 have -- can we look at the damage model?

12 THE COURT: I sustain the objection.

13 BY MR. BURKS:

14 Q Do you have a damage model in this letter?

15 A I don't know. I don't think so.

16 MR. BURKS: All right. Nothing further, Judge.

17 THE COURT: Thank you.

18 Mr. Choudhri?

19 REDIRECT EXAMINATION OF JERRY ALEXANDER

20 BY MR. CHOUDHURI:

21 Q Mr. Alexander, you agreed to take this case on a  
22 contingency where it would cost the estate no money,  
23 correct?

24 MR. FITZMAURICE: Objection, asked and answered.

25 THE COURT: I'll sustain the objection.

1           You can't be repetitive, Mr. Choudhri. Ask  
2 something that hasn't been asked already.

3 BY MR. CHOUDHURI:

4 Q I just want to make sure I understand. You did speak  
5 to the Chapter 11 trustee or their counsel?

6 MR. FITZMAURICE: Objection, Your Honor, asked and  
7 answered.

8 THE COURT: I'll sustain the objection.

9 Don't be repetitive, Mr. Choudhri. If it's  
10 already been asked and answered, I've already heard it. You  
11 don't need to go over it again.

12 BY MR. CHOUDHURI:

13 Q In the settlement agreement, Mr. Alexander, there's  
14 mutual promises that go both ways, right?

15 A Yes, sir.

16 Q So do you have an understanding, as a follow-up to Mr.  
17 Fitzmaurice's questions, of how the settlement agreement  
18 came to be?

19 MR. FITZMAURICE: Objection, Your Honor,  
20 relevance.

21 THE COURT: I'll sustain the objection.

22 BY MR. CHOUDHURI:

23 Q Are you aware in the settlement agreement that the bank  
24 had an obligation to provide a loan sale agreement?

25 MR. FITZMAURICE: Objection, Your Honor. The



1       agreement speaks for itself. We can look at it.

2               THE COURT: I'll sustain the objection.

3       BY MR. CHOUDHURI:

4       Q       What was your experience in the Bailey Tool case, Mr.  
5       Alexander?

6               MR. FITZMAURICE: Objection, Your Honor,  
7       relevance.

8               THE COURT: I'll sustain the objection. Thank  
9       you.

10      BY MR. CHOUDHURI:

11      Q       Did the bank frustrate performance by the debtor and/or  
12      me individually?

13              MR. FITZMAURICE: So objection, Your Honor, calls  
14      for speculation and calls for a legal conclusion and assumes  
15      facts not in evidence.

16              THE COURT: I'll sustain the objection. Thank  
17      you.

18      BY MR. CHOUDHURI:

19      Q       Mr. Fitzmaurice read some provisions of the settlement  
20      agreement. There are other provisions of obligations by the  
21      bank as well in that same settlement agreement, correct?

22              MR. FITZMAURICE: Objection, Your Honor. We  
23      can -- best evidence. We can look at the agreement to see  
24      what its terms are.

25              THE COURT: The exhibit speaks for itself.

1 MR. CHOUDHURI: And that's in, Your Honor?

2 THE COURT: I don't think anyone has actually  
3 offered it as of yet, but I'm happy to admit it if the  
4 parties will agree to it.

5 MR. FITZMAURICE: We agree.

6 THE COURT: All right. Then 508-7, the settlement  
7 agreement, is admitted.

8 (Trial Exhibit 508-7 entered into evidence)

9 THE COURT: Thank you.

10 BY MR. CHOUDHURI:

11 Q Do you believe that the National Bank of Kuwait has  
12 committed a tort?

13 MR. FITZMAURICE: Objection, Your Honor.

14 THE COURT: Basis of the objection?

15 MR. FITZMAURICE: Mr. Alexander's expert opinion  
16 about whether or not the bank has committed a tort is not  
17 relevant. It calls for a legal conclusion, and those are  
18 for Your Honor.

19 THE COURT: I'll sustain the objection.

20 BY MR. CHOUDHURI:

21 Q You've reviewed the documents in the case, correct?

22 A Yes, sir.

23 Q In the documents you reviewed in the case, have you  
24 seen offers and leases and correspondence that was submitted  
25 to the National Bank of Kuwait?

1           MR. FITZMAURICE: So objection, Your Honor, vague  
2 as to the case, which case we're talking about, but also  
3 that the documents would be the best evidence of --

4           THE COURT: I'll sustain the objection.

5           You want to project, Mr. Choudhri?

6           MR. CHOUDHURI: Yes. Can I put up the letter?

7           THE COURT: I just need to know where you're going  
8 to connect from and I'll put it up. Where do you want it,  
9 where do you want to project from and who's going to  
10 project?

11           Mr. Choudhri, you can connect right there and do  
12 it yourself if you'd like. Mr. Choudhri, he can stand there  
13 and assist you. That's fine, too.

14           MR. CHOUDHURI: Thank you.

15           MR. FITZMAURICE: Your Honor, just for purposes of  
16 the record, can we just have a representation as to who that  
17 is?

18           THE COURT: Sure. What's your name, sir?

19           MR. PALAVAN: Shea Palavan.

20           THE COURT: One more time?

21           MR. PALAVAN: Shea Palavan.

22           THE COURT: Shea Palavan? Is that correct? Did I  
23 say that correctly?

24           MR. PALAVAN: Yes, Your Honor.

25           MR. FITZMAURICE: And in what capacity is Mr.

1 Palavan?

2 MR. CHOUDHURI: He's assisting me.

3 MR. FITZMAURICE: Is he a lawyer or a business  
4 person or something else?

5 MR. CHOUDHURI: Well, he is a lawyer. But he's  
6 assisting me --

7 MR. FITZMAURICE: Well, If Mr. Choudhri is  
8 represented by counsel --

9 THE COURT: All he's doing is helping project  
10 because of his difficulties with the stroke. I don't have  
11 any problem with that. That's fine. Go ahead.

12 MR. FITZMAURICE: Thank you, Your Honor.

13 THE COURT: Thank you.

14 MR. CHOUDHURI: I just want to clarify, Your  
15 Honor. I'm able to have an assistant to help me?

16 THE COURT: I said he's more than happy to --

17 MR. CHOUDHURI: Okay. Okay. Thank you, Your  
18 Honor. I just wanted to know if I understood.

19 THE COURT: Yeah.

20 BY MR. CHOUDHURI:

21 Q Mr. Alexander, you've been to the building, 2425?

22 A Yes, sir.

23 Q Can you describe the building?

24 MR. FITZMAURICE: Objection, relevance, Your  
25 Honor.

1 THE COURT: It's not relevant, Mr. Choudhri.

2 BY MR. CHOUDHURI:

3 Q All right. You've reviewed the contract that Mr.  
4 Caldwell and the debtor signed?

5 MR. FITZMAURICE: Objection, Your Honor.

6 THE COURT: Best evidence, if you have a contract,  
7 we need to look at the contract. He can't testify what's in  
8 it.

9 BY MR. CHOUDHURI:

10 Q I'd point you to the document on your screen, Mr.  
11 Caldwell --

12 MR. FITZMAURICE: Your Honor, we object to the use  
13 of the exhibit. The purpose is to say that this is an  
14 agreement by Mr. Caldwell. It's not a letter from him.  
15 There is no signature. There is no DocuSign. There's a  
16 computer-generated name in script. There's no way for  
17 anyone to know whether he in fact put that on there. So the  
18 document is not authenticated, and it lacks foundation.

19 THE COURT: I'll sustain the objection on lack of  
20 authentication.

21 BY MR. CHOUDHURI:

22 Q Did you receive this letter?

23 THE COURT: You can't ask questions about it. I  
24 sustained the objection based on lack of authentication.

25 BY MR. CHOUDHURI:

1 Q Have you seen the contract for \$85 million that was  
2 attached to your letter?

3 MR. FITZMAURICE: Your Honor, I would just object  
4 to the use of the word contract.

5 THE COURT: I'll sustain the objection as to the  
6 form of the question. Ask another question.

7 BY MR. CHOUDHURI:

8 Q Do you see what's on your screen, Mr. Alexander?

9 A Yes.

10 Q What does the heading say?

11 MR. FITZMAURICE: Objection, Your Honor, the  
12 document speaks for itself.

13 THE COURT: It's not in evidence, but I'll sustain  
14 the objection.

15 BY MR. CHOUDHURI:

16 Q Mr. Alexander, this is a letter. Is this an email that  
17 you authored to R.J. Shannon and Kyung Lee on April the 3rd?

18 A Yes, sir.

19 Q And does this have an attachment? Is this the complete  
20 email and attachment that goes with it?

21 A I think so.

22 MR. CHOUDHURI: I'd like to move to make this  
23 document, 499-83, Your Honor.

24 THE COURT: Objections?

25 MR. FITZMAURICE: Yes, Your Honor. Mr. Choudhri,

1     separate and apart from his counsel, or the counsel for one  
2     of his entities, is offering it for the proof, the truth of  
3     all of the matters asserted. Your Honor already admitted  
4     the letter for a limited purpose, and this is now an attempt  
5     to introduce all of it for its truth and we would object to  
6     that.

7                 THE COURT: I'll sustain the objection.

8     BY MR. CHOUDHURI:

9     Q     Mr. Alexander, do you believe that the Bank of Kuwait  
10    properly posted for foreclosure of the property?

11                MR. FITZMAURICE: Objection, Your Honor,  
12    relevance. It lacks foundation. It assumes facts not in  
13    evidence.

14                THE COURT: I'll sustain the objection.

15    BY MR. CHOUDHURI:

16    Q     Do you have an opinion of what the value of this case  
17    is worth?

18                MR. FITZMAURICE: Objection, vague as to this  
19    case.

20                THE COURT: I'll sustain the objection. Rephrase  
21    the question.

22    BY MR. CHOUDHURI:

23    Q     Do you have an opinion on what the value of the claims  
24    against the national bank are?

25                MR. FITZMAURICE: Your Honor, it's offering --

1 seeking to have Mr. Alexander offer an opinion as to the  
2 ultimate issue. And again, those are for Your Honor to  
3 decide or for another court to decide and not for Mr.  
4 Alexander.

5 THE COURT: I'll sustain the objection.

6 BY MR. CHOUDHURI:

7 Q In your investigation, did you come to learn that there  
8 was an offer to buy 2425 (indiscernible) 55 percent of it,  
9 for \$75 million?

10 MR. FITZMAURICE: So objection, Your Honor, both  
11 to the use of the term investigation. That assumes facts  
12 that are not of evidence. And Mr. Choudhri is just trying  
13 to end run Your Honor's previous ruling about the  
14 admissibility of the factual contents of the letter and its  
15 exhibits.

16 THE COURT: I'll sustain the objection. Thank  
17 you.

18 BY MR. CHOUDHURI:

19 Q If you were to take this case on, on a contingency,  
20 would it cost the estate any money?

21 MR. FITZMAURICE: Objection, asked and answered.

22 THE COURT: I'll sustain the objection.

23 BY MR. CHOUDHURI:

24 Q Mr. Alexander, do you believe the debtor -- the NBK has  
25 interfered with the debtor's efforts to pay NBK off --



1 MR. FITZMAURICE: Same objection --

2 BY MR. CHOUDHURI:

3 Q -- and perform under the settlement agreement?

4 THE COURT: I'll sustain the objection.

5 MR. FITZMAURICE: Your Honor, also --

6 THE COURT: This witness doesn't have any personal  
7 knowledge of any of these facts, Mr. Choudhri. Okay. He's  
8 evaluated them. I'm aware of that. Okay. But he doesn't  
9 have personal knowledge. He can't tell me that any of these  
10 things actually occurred. Okay. So move along. Again, I'm  
11 going to give you a couple more questions and then I'm going  
12 to cut you off.

13 MR. CHOUDHURI: I'm almost done, Your Honor.

14 Thank you.

15 BY MR. CHOUDHURI:

16 Q Mr. Alexander, do you believe there's any questions I  
17 haven't asked you that --

18 THE COURT: He can't give a narrative, Mr.  
19 Choudhri. That's not the way it works.

20 MR. CHOUDHURI: Okay. All right. No more  
21 questions then. Thank you.

22 THE COURT: Thank you. All right. I'll go back  
23 to Mr. Fitzmaurice.

24 MR. FITZMAURICE: Nothing further, Your Honor.

25 THE COURT: Thank you.

1           Mr. Burks?

2           MR. BURKS: How long has it been since you've had  
3 to tell somebody to ask questions and not to give a  
4 narrative?

5           THE COURT: Go ahead, please ask your questions.

6           MR. BURKS: At this point, Your Honor, on behalf  
7 of 2425 WL, we call --

8           THE COURT: Are you -- do you pass on this  
9 witness? I asked you if you had any questions for this  
10 witness.

11          MR. BURKS: None.

12          THE COURT: Okay. So you are excused, sir. Thank  
13 you for coming.

14          MR. ALEXANDER: Thank you, Your Honor.

15          THE COURT: All right. You're going to call who,  
16 Mr. Burks?

17          MR. BURKS: Now my turn to call another witness?

18          THE COURT: Yes.

19          MR. BURKS: Your Honor, Mr. Jeff Alexander is  
20 being called now on behalf of 2425 (indiscernible) --

21          THE COURT: Mr. Alexander, will you come forward,  
22 wherever you are?

23          MR. SATHER: Steidley.

24          MR. BAKER: Steidley.

25          MR. STEIDLEY: I think he means Jeff Steidley,

1 Judge.

2 THE COURT: Okay.

3 MR. BURKS: Let me try again. On behalf of 2425  
4 WL, we call Mr. Jeff Steidley.

5 THE COURT: All right, sir, will you please state  
6 your name for the record.

7 MR. STEIDLEY: Jeff Steidley, Judge.

8 THE COURT: All right. Please raise your right  
9 hand to be sworn. Do you swear or affirm to tell the truth,  
10 the whole truth and nothing but the truth, so help you God?

11 MR. STEIDLEY: I do.

12 THE COURT: All right. Please be seated. Thank  
13 you.

14 MR. FITZMAURICE: Your Honor, again, just for the  
15 record, we object to Mr. Steidley being called. He's  
16 counsel for 2425 WL. It's not clear what possible relevant  
17 evidence he could have to whether or not the bank's entitled  
18 to credit bid tomorrow.

19 THE COURT: Please object to anything that he's  
20 asked and I'll rule on the record. Thank you.

21 Mr. Burks, go ahead.

22 DIRECT EXAMINATION OF JEFF STEIDLEY

23 BY MR. BURKS:

24 Q Can you please state your name for the record, sir?

25 A My name is Jeff Steidley.

1 Q And what do you do for a living?

2 A I am an attorney.

3 Q And in connection with this bankruptcy case, have you  
4 filed any pleadings?

5 A I filed a motion to remand on a case that I filed in  
6 state court.

7 Q So is your answer that you filed a state court  
8 petition?

9 A I filed a state court --

10 MR. FITZMAURICE: Objection, Your Honor, leading.

11 THE COURT: It's preliminary. I'll allow it. Go  
12 ahead.

13 THE WITNESS: I filed state court petition. It  
14 was removed. I filed a motion to remand in Judge Norman's  
15 court.

16 BY MR. BURKS:

17 Q In Document Number 6, ECF Number --

18 MR. BURKS: Can we please put it on the screen.

19 MR. BAKER: 499-6.

20 MR. BURKS: What is it?

21 MR. BAKER: 499-6. The court has taken judicial  
22 notice of this document.

23 BY MR. BURKS:

24 Q Is this the document you filed that you were referring  
25 to?

1     A     Yes, sir.

2     Q     Without stating facts, describe what this lawsuit is in  
3     terms of the allegations that are in it because I want to  
4     understand the scope of the dispute and how it affects a  
5     credit bid, sir.

6             MR. FITZMAURICE:  I'll object Your Honor.  Your  
7     Honor's already taken judicial notice of the contents of  
8     this pleading for the fact that they were made.  Your Honor  
9     already has that information available.  It's not --

10            THE COURT:  I think the document speaks for  
11     itself, Mr. Burks.

12     BY MR. BURKS:

13     Q     Why would this document be relevant to a credit bid,  
14     sir?

15             MR. FITZMAURICE:  Objection, Your Honor.

16             THE COURT:  Go ahead.

17             MR. FITZMAURICE:  The question is calls for a  
18     legal conclusion about -- he's asking the witness to offer  
19     an opinion as to why this pleading is relevant.

20             THE COURT:  I'll sustain the objection.

21     BY MR. BURKS:

22     Q     Did you file this action on a contingency fee or an  
23     hourly fee basis?

24     A     Contingency.

25     Q     Why?

1       A       The case has a lot of value and I'd get a percentage of  
2       that value. That's a good deal for me.

3               MR. BURKS: Nothing further, Judge.

4               THE COURT: All right. Thank you.

5               Mr. Choudhri?

6               MR. CHOUDHURI: (indiscernible)

7               THE COURT: Excuse me, sir. I can't hear you.

8                       DIRECT EXAMINATION OF JEFF STEIDLEY

9       BY MR. CHOUDHURI:

10      Q       What's your name, sir?

11      A       Jeff Steidley.

12      Q       And your occupation?

13      A       Attorney.

14      Q       And where did you graduate?

15      A       Vanderbilt Law School, 1980.

16      Q       The year I was born. And your experience, your  
17      background, which law firm did you start off at?

18               MR. FITZMAURICE: Objection, relevance, Your  
19      Honor.

20               THE COURT: What's the relevance, Mr. Choudhri?

21               MR. CHOUDHURI: Just laying a little background,  
22      Your Honor.

23               THE COURT: I don't need it. Thank you.

24      BY MR. CHOUDHURI:

25      Q       What is the venue provision in the confidential

1 settlement agreement that has been entered in this case?

2 MR. FITZMAURICE: Objection, Your Honor. The  
3 agreement speaks for itself.

4 THE COURT: That document speaks for itself, Mr.  
5 Choudhri. I'll sustain the objection.

6 BY MR. CHOUDHURI:

7 Q Are you intending on filing the summary judgment in  
8 short order?

9 MR. FITZMAURICE: Objection, Your Honor.

10 THE COURT: Basis of the objection?

11 MR. FITZMAURICE: Is relevance. What counsel  
12 intends to do. I mean this is a very strange situation  
13 where the client is questioning the lawyer on the stand, one  
14 of many very strange issues in this case. It's not relevant  
15 to the issue of whether or not the bank is entitled to  
16 credit bid at the auction tomorrow.

17 THE COURT: I'll sustain the objection based on  
18 relevance. I don't think it's what he's going to do in the  
19 case is relevant to the issue that I have to decide which is  
20 currently whether the bank gets to credit bid or not.

21 BY MR. CHOUDHURI:

22 Q In your belief, who owns the note as we sit here today?

23 MR. FITZMAURICE: Objection, Your Honor. Mr.  
24 Steidley's belief on that issue is not relevant to  
25 whether --

1 THE COURT: I'll sustain the objection.

2 BY MR. CHOUDHURI:

3 Q How fast can this matter be decided, the case that  
4 you've brought?

5 MR. FITZMAURICE: Same objection, Your Honor.

6 THE COURT: I'll sustain the objection.

7 BY MR. CHOUDHURI:

8 Q If NBK wins a credit bid and it's found that NBK didn't  
9 own the note and lien in the venue under the confidential  
10 settlement agreement has stated, then what would be the  
11 outcome of who owns the property?

12 MR. FITZMAURICE: So objection, Your Honor, calls  
13 for a legal conclusion. And in fact, it calls for the  
14 lawyer to reveal his attorney work product and attorney-  
15 client communications. So those have all now been waived  
16 and we ask for an immediate production of all of those  
17 materials. He's asking him for his -- for his legal work  
18 product and the analysis of --

19 THE COURT: So at this point in time, he hasn't  
20 answered the question. If he were to answer, I think he'd  
21 waive privilege. He can claim it if he wants to. He's the  
22 person.

23 MR. FITZMAURICE: But Your Honor, it's a client.

24 THE COURT: I understand. I understand.

25 MR. FITZMAURICE: The client controls the



1 privilege, and he's --

2 THE COURT: I understand. But this is not a  
3 discovery matter. It's a matter for cash collateral, so --  
4 I mean, for credit bidding. So I'll sustain the objection  
5 at this point in time.

6 I'd ask you to ask another question, and just be  
7 aware that you may be waiving privilege.

8 MR. BURKS: Objection. 2425 WL, I'm their counsel,  
9 does not waive the privilege.

10 THE COURT: Okay. Go ahead.

11 MR. FITZMAURICE: Excuse me. The petition is by  
12 Mr. Choudhri --

13 THE COURT: Choudhri, personally. I understand.

14 MR. FITZMAURICE: -- and Mr. Steidley is --

15 THE COURT: Go ahead, sir. Ask your next  
16 question.

17 BY MR. CHOUDHURI:

18 Q I don't believe my question is without you revealing  
19 any privilege. My question is if the bank is a successful  
20 credit bid winner at an auction, which presumes it's buying  
21 it free and clear of all liens, and it's later found out  
22 through your case, a court, that they didn't hold the note  
23 and lien, what comes of who owns the property, Mr. Steidley,  
24 if you know?

25 MR. FITZMAURICE: So all the same --

1 MR. BURKS: Objection, irrelevant.

2 THE COURT: I'll sustain the objection, Mr. Burks'  
3 objection.

4 BY MR. CHOUDHURI:

5 Q Do the claims against NBK have value?

6 MR. FITZMAURICE: Objection, Your Honor.

7 THE COURT: Sorry. Bear with me. The objection  
8 is based on what?

9 MR. FITZMAURICE: He is asking the lawyer to offer  
10 an opinion as to the claim, the merit of the claims, which  
11 is for Your Honor to decide.

12 THE COURT: I'll sustain the objection.

13 MR. FITZMAURICE: Also, Your Honor, again, I would  
14 argue that the questions as to the merit of the claims is a  
15 question that's designed to reveal the contents of attorney-  
16 client communications or the lawyer's own work product.

17 THE COURT: If there's an adversary proceeding,  
18 then we can deal with that in the adversary proceeding or  
19 the remand, as the case may be.

20 Go ahead, Mr. Choudhri.

21 BY MR. CHOUDHURI:

22 Q Are you aware of a contingent expense lender willing to  
23 put up \$2 million to support the litigation against NBK?

24 MR. FITZMAURICE: Objection, lacks foundation,  
25 assumes facts not in evidence.

1 THE COURT: I'll sustain it. It's speculation.  
2 It'll sustain the objection.

3 BY MR. CHOUDHURI:

4 Q Do the claims against NBK have value?

5 MR. FITZMAURICE: Same objection.

6 THE COURT: I'll sustain the objection. Thank  
7 you.

8 BY MR. CHOUDHURI:

9 Q Were you in the room when Mr. Troop made his opening  
10 statements?

11 A I was.

12 Q You recall Mr. Troop making a statement, I'm sure it's  
13 on the record, that NBK gets a release along with a credit  
14 bid?

15 MR. FITZMAURICE: Objection, Your Honor. A  
16 release is a plan confirmation issue. It's not about credit  
17 bid.

18 THE COURT: I'll sustain the objection. It's plan  
19 confirmation, Mr. Choudhri.

20 MR. CHOUDHURI: I was just referring to his  
21 opening, Your Honor.

22 THE COURT: It's still plan confirmation, and I'm  
23 here on credit bidding.

24 BY MR. CHOUDHURI:

25 Q Are you aware the state court issued -- the state court

1     had a several day injunction hearing and issued a TI in  
2     favor of the debtor against NBK?

3             MR. FITZMAURICE:  Objection, Your Honor.  If there  
4     is such a ruling, then we could see that.  We could see the  
5     exhibit and they could look at it.

6             THE COURT:  I'll sustain the objection.  If you'd  
7     like to present it, feel free.

8             MR. CHOUDHURI:  Where is it?  March 2022?  I think  
9     it's an exhibit, Your Honor.

10    BY MR. CHOUDHURI:

11    Q     While he's doing that, do you have any knowledge as it  
12    relates to how the tax liens are treated in the settlement  
13    agreement and the proof of claim as it relates to the credit  
14    bid for the Bank of Kuwait?

15             MR. FITZMAURICE:  Objection, Your Honor.  Those  
16    documents speak for themselves and it mischaracterizes the  
17    evidence (indiscernible) --

18             THE COURT:  I'll sustain the objection.  Those  
19    documents speak for themselves and they're already in  
20    evidence.

21    BY MR. CHOUDHURI:

22    Q     What would happen to the tax liens once NBK accepted  
23    the tender of \$26 million?

24             MR. FITZMAURICE:  So objection, Your Honor -- Your  
25    Honor, excuse me.  Assumes facts not in evidence.  It's also

1 not relevant to credit bidding. It's asking about an  
2 unrelated issue.

3 THE COURT: And there's no foundation.

4 MR. FITZMAURICE: And there's no foundation.

5 THE COURT: I'll sustain the objection.

6 BY MR. CHOUDHURI:

7 Q Do you believe the bank fraudulently induced me and the  
8 debtor from entering into the confidential settlement  
9 agreement?

10 MR. FITZMAURICE: So objection, Your Honor.

11 THE COURT: I don't even know how he can answer  
12 that question. I'll sustain the objection.

13 BY MR. CHOUDHURI:

14 Q Mr. Steidley, have you seen this document?

15 A I have.

16 MR. CHOUDHURI: Can you scroll it up? Scroll it  
17 up.

18 BY MR. CHOUDHURI:

19 Q If you can just take a second and read this document,  
20 Mr. Steidley. What has it stated?

21 MR. FITZMAURICE: Your Honor, the document speaks  
22 for itself.

23 THE COURT: It does speak for itself.

24 Do you want to admit it into evidence, Mr.  
25 Choudhri?

1 MR. CHOUDHURI: Yes, Your Honor.

2 THE COURT: What ECF number is it? Let me ask you  
3 this question. Is this the lawsuit that led to the  
4 settlement agreement?

5 MR. CHOUDHURI: Yes, Your Honor.

6 THE COURT: Okay. Thank you.

7 MR. FITZMAURICE: Your Honor, on that basis, we  
8 would object on relevance grounds.

9 THE COURT: I'll sustain the objection as to  
10 relevance.

11 Mr. Choudhri, I think that the settlement  
12 agreement is very, very germane to what we're discussing.  
13 What happened leading up to that settlement agreement is not  
14 relevant at all. All right.

15 BY MR. CHOUDHURI:

16 Q Mr. Steidley, are you -- have you read any  
17 correspondence or are you aware that, as we sit here today,  
18 if the settlement agreement has been rescinded or if it was  
19 -- or if it was entered in being rescinded.

20 MR. FITZMAURICE: So objection, Your Honor,  
21 hearsay, assumes facts that are not in evidence.

22 THE COURT: And there's no foundation.

23 MR. FITZMAURICE: And there's no foundation.

24 THE COURT: I'll stay the objection. There's so  
25 many reasons to object to that question.

1 MR. FITZMAURICE: And Your Honor, I'm sorry for  
2 making this objection, but the time is what it is. We have  
3 the things on our schedule for today and for tomorrow.  
4 There's a clear pattern of what's happening in this case, of  
5 an attempt to run out the clock so that we can't get to --

6 THE COURT: Well, the clock's not going to run  
7 out. We'll go until we resolve this matter. We may not get  
8 to plan confirmation today, but we're going to resolve this  
9 matter today, as I entered in the order. And if we're here  
10 until 2:00 in the morning, we'll be here until 2:00 in the  
11 morning.

12 All right. But again, Mr. Choudhri, I'm going to  
13 warn you that your ability to simply go on and ask questions  
14 that I'm going to overrule over and over and over again,  
15 it's going to be very, very limited. So I'm going to ask  
16 you to ask a question that relates to the pleading that you  
17 filed. I'm happy to hear it. I'm giving you an awful lot  
18 of leeway, but I'm about to cut you off. Okay.

19 MR. CHOUDHURI: Okay.

20 BY MR. CHOUDHURI:

21 Q What are the reasons that NBK should not be permitted  
22 to credit bid, Mr. Steidley?

23 MR. FITZMAURICE: Objection.

24 THE COURT: He can't answer that question.

25 Mr. Choudhri, you're done. Thank you. Sit down.

1           Mr. Fitzmaurice, do you have any questions for  
2 this witness?

3           MR. FITZMAURICE: I do not, Your Honor.

4           THE COURT: All right. Thank you.

5           You may be excused.

6           Mr. Burks, next witness?

7           MR. BURKS: 2425 WL, we rest on the evidence.

8           THE COURT: Thank you. All right.

9           MR. WETWISKA: Hold on. Can I -- can I be -- I've  
10 been subpoenaed here. Can I be excused, Your Honor?

11          THE COURT: I don't know what you've been  
12 subpoenaed on, sir. So you --

13          MR. WETWISKA: For this hearing. I received a  
14 subpoena Friday night.

15          THE COURT: Bear with me for one second. I don't  
16 know who you are. Come to the podium, sir.

17          MR. WETWISKA: My name is --

18          THE COURT: Come to the podium, sir. I need -- I  
19 need to be on the record.

20          MR. WETWISKA: Thank you. I do too. So Your  
21 Honor --

22          THE COURT: Bear with me. What's your name?

23          MR. WETWISKA: Your Honor, my name is Jim  
24 Wetwiska. I'm a lawyer here in town. I was subpoenaed  
25 Friday afternoon. I'm supposed to be in a focus group this



1 morning. I set everything aside to appear to accommodate  
2 this court. If I'm going to be called, I want to be called  
3 and I want to be released.

4 THE COURT: So bear with me one second, Mr.  
5 Wetwiska.

6 So does anybody intend to call him as a witness at  
7 any point in time today?

8 MR. BURKS: I've been told that I spoke in error,  
9 and I'm a representative of my client, and I have to retract  
10 my statement that I rest (indiscernible). I have two more  
11 witnesses to call, Judge.

12 THE COURT: Okay. Then I'm sorry, sir, I can't  
13 excuse you until we're done.

14 Okay. So who's your next witness, Mr. Burks?

15 MR. BURKS: Jim Wetwiska.

16 THE COURT: All right. Come on up. Come forward.

17 MR. WETWISKA: Can I just get my phone so I  
18 (indiscernible) --

19 THE COURT: Sure. Feel free.

20 MR. WETWISKA: Thank you.

21 THE COURT: Sir, if you'll step to the podium,  
22 I'll swear you in. Do you swear or affirm to tell the  
23 truth, the whole truth and nothing but the truth, so help  
24 you God?

25 MR. WETWISKA: I do, Your Honor.

1 THE COURT: All right. Please be seated, sir.

2 MR. WETWISKA: Thank you.

3 THE COURT: Go ahead, Mr. Burks.

4 DIRECT EXAMINATION OF JIM WETWISKA

5 BY MR. BURKS:

6 Q Sir, will you state your name for the record?

7 A Sure. Jim Wetwiska.

8 Q And how do you pronounce -- spell your last name, sir?

9 A W-E-T-W-I-S-K-A.

10 Q And what is your profession?

11 A I'm a lawyer.

12 Q And what do you do?

13 A Trial lawyer.

14 Q And do you have any knowledge of any legal matter in  
15 this case?

16 MR. FITZMAURICE: Objection, Your Honor.

17 THE COURT: That's such an open-ended question.  
18 Rephrase it, Mr. Burks.

19 THE WITNESS: (indiscernible) without being  
20 objected, so --

21 THE COURT: No, I sustained the objection. So ask  
22 another question, Mr. Burks.

23 THE WITNESS: Yes, I do have --

24 THE COURT: No. I sustained the objection. He  
25 needs to ask another question.

1                   Go ahead.

2       BY MR. BURKS:

3       Q     Sir, do you have any knowledge of litigation with  
4       respect to against NBK?

5                   MR. FITZMAURICE:  Objection, Your Honor, vague,  
6       lacks foundation.  What litigation?

7                   THE COURT:  Let's be more specific, Mr. Burks.

8                   MR. BURKS:  Well, let me get there, please, and  
9       I'll -- I apologize.

10      BY MR. BURKS:

11      Q     Sir, have you filed a lawsuit against NBK on behalf of  
12      any entity of which Mr. Choudhri is the representative?

13      A     I (indiscernible) --

14                   MR. FITZMAURICE:  Objection, vague as to time.

15                   MR. BURKS:  Ever.  Has he ever filed --

16                   THE COURT:  I'll overrule the objection.  It's  
17      preliminary.  Go ahead.

18                   THE WITNESS:  I did not file a lawsuit.  I came in  
19      as additional counsel in a matter in the summer of 2022 for  
20      Galleria 2425 Owner.

21      BY MR. BURKS:

22      Q     And what lawsuit was that, sir?  What was the subject  
23      matter of that lawsuit, that specific lawsuit?

24      A     The subject of the lawsuit was the 2425 Galleria  
25      building and the subject dealing with the note between the

1 National Bank of Kuwait and 2425 Galleria Owner.

2 Q And what were the causes of action alleged in that  
3 action?

4 MR. FITZMAURICE: Objection, Your Honor,  
5 relevance.

6 MR. BURKS: Response?

7 THE COURT: Go ahead.

8 MR. BURKS: Everyone's been talking about  
9 settlement agreement that came from this lawsuit, the scope  
10 of the litigation, disputes that are relevant here to credit  
11 bidding. This is what it's about. This is what --

12 THE COURT: I'm going to sustain the objection,  
13 Mr. Burks, and I'm going to give you my reason why. That  
14 litigation was taken and formalized into a settlement  
15 agreement.

16 MR. BURKS: All right.

17 THE COURT: It's the settlement agreement that's  
18 really relevant, if anything is relevant.

19 MR. BURKS: Sure.

20 THE COURT: So what happened in the litigation I  
21 don't really care about.

22 MR. TROOP: All right.

23 THE COURT: Okay. Go ahead.

24 BY MR. BURKS:

25 Q There was a settlement agreement that came from the

1 litigation that we're not going to discuss, correct?

2 A Correct.

3 Q All right, and in that settlement agreement, did the  
4 plaintiff have an opportunity or was there a basis for the  
5 provision for making a settlement payment amount to buy the  
6 note or the buy of the property?

7 MR. FITZMAURICE: Objection, Your Honor, vague, as  
8 to plaintiff, compound and the settlement agreement is in  
9 evidence. He can refer to its terms.

10 THE COURT: It's in evidence. It speaks for  
11 itself. If you want to ask him specific questions, then you  
12 can project and ask them. But the settlement agreement  
13 speaks for itself, Mr. Burks.

14 BY MR. BURKS:

15 Q Who was the plaintiff who had the ability or provision  
16 to pay money to NBK to buy the note and/or the property?

17 MR. FITZMAURICE: Objection, Your Honor,  
18 mischaracterizes the terms of the settlement agreement which  
19 are in evidence and can be reviewed.

20 THE COURT: I'll sustain the objection.

21 MR. BURKS: One moment, Your Honor.

22 THE COURT: You want to project him somewhere?

23 MR. BURKS: Mr. Baker is putting the settlement  
24 agreement up, Judge. Let's go down to Page 34.

25 BY MR. BURKS:

1 Q Have you seen this document before, sir?

2 A Yes, sir.

3 MR. BURKS: And let the record reflect that the  
4 settlement agreement previously admitted into evidence is on  
5 the screen, Judge.

6 BY MR. BURKS:

7 Q So the settlement agreement, which we all see, and  
8 Subparagraph D on Page 4, do you have any information or  
9 knowledge as to whether or not that settlement payment was  
10 ever tendered?

11 MR. FITZMAURICE: Objection, Your Honor, calls for  
12 a legal conclusion as to the word tendered. Also vague as  
13 tender. It's a legal concept.

14 THE COURT: I'll overrule the objection.

15 THE WITNESS: (indiscernible) I understand that  
16 there were numerous times when one of the parties in this  
17 settlement agreement were attempting to tender the -- it's  
18 not actually \$27 million when you take out the credits, but  
19 when they attempted to tender approximately \$26 million.

20 BY MR. BURKS:

21 Q Do you have knowledge as to -- yes or no question. Do  
22 you have personal knowledge as to why the tender was not  
23 completed?

24 MR. FITZMAURICE: Objection, Your Honor, personal  
25 knowledge as to why? Either it was or it wasn't.

1 THE COURT: I'll overrule the objection.

2 Do you know, sir?

3 THE WITNESS: I do know.

4 BY MR. BURKS:

5 Q Why was it -- why were -- the tenders that you just  
6 testified that were made, why were they not accepted?

7 MR. FITZMAURICE: So objection, Your Honor, again  
8 to the word tenders. And the question is designed to get  
9 the witness to testify as to why the bank or some  
10 representative of the bank did something. He doesn't have  
11 personal knowledge of that.

12 MR. BURKS: I don't --

13 THE COURT: Okay. I'll let him testify now and  
14 I'll basically determine -- I think it goes to weight. I  
15 don't think he can tell me what the bank did or didn't do,  
16 but you can tell me what the other side did.

17 Go ahead, answer the question.

18 BY MR. BURKS:

19 Q What did your client do?

20 A Well, let's be specific about who the parties are and  
21 what they voted to do, okay?

22 Q All right.

23 A Is that fair, Mr. Burks?

24 Q That is fair, sir. That is very fair. Who attempted  
25 to make a payment?

1       A       The --

2               MR. FITZMAURICE:  Objection, leading and calls --  
3       assumes facts not in evidence about attempting to make a  
4       payment.

5               THE COURT:  I'm going to overrule the objection.  
6               Go ahead.

7               THE WITNESS:  There are a number of them.  And  
8       maybe if I can just start in order?

9               MR. BURKS:  Please, sir.

10              THE WITNESS:  The first is, I understand, and what  
11       I observed was in the spring, approximately February and  
12       March of 2022, that there was some type of arrangement where  
13       Mr. Choudhri was going to make a payment to purchase the  
14       promissory note.  And that payment was being made based upon  
15       an arrangement that Mr. Choudhri had reached with Mr.  
16       Caldwell initially.

17              MR. FITZMAURICE:  So objection, Your Honor.  If  
18       there's an arrangement, if there's a document, let's look at  
19       it.

20              THE COURT:  I'm going to overrule the objection  
21       and let him go ahead and testify.

22              Go ahead.

23              MR. BURKS:  All right, Your Honor.

24       BY MR. BURKS:

25       Q       Anything else?  What happened to this agreement that



1     you were the attorney for?

2     A     Well, those are two different questions.

3             THE COURT:  Mr. Wetwiska, I want to make sure that  
4     you're testifying as to personal knowledge and not  
5     speculating at any point in time.  So be very careful of  
6     what you tell me.  Okay?  If you have personal knowledge,  
7     fine.  If you don't know, that's fine.  So I just want to  
8     know what you know.  Okay.

9             THE WITNESS:  Well, that's what I'm trying to do,  
10    Your Honor.

11            THE COURT:  I appreciate that.

12            THE WITNESS:  Let's be on the same page.  It is a  
13    little difficult because I was the lawyer and I have  
14    personal knowledge.

15            THE COURT:  Who did you represent?

16            THE WITNESS:  I represented -- originally I  
17    represented Galleria 2425 Owner.

18            THE COURT:  Okay.

19            THE WITNESS:  Then, as after the settlement  
20    agreement was signed, going forward, I represented Galleria  
21    2425 Owner and Mr. Choudhri.

22            THE COURT:  Okay.

23            THE WITNESS:  And so I have -- I have knowledge  
24    regarding things that took place --

25            THE COURT:  For your client?

1           THE WITNESS:  -- after this settlement.  Yes.  For  
2 my client.

3           THE COURT:  Okay.  All right.

4           THE WITNESS:  So that's part of the issue here is  
5 I also have to be careful not to disclose attorney-client  
6 information.  So I'm trying to do the best I can with all  
7 those.

8           THE COURT:  Okay.  Thank you.

9           MR. BURKS:  And I'm trying to be careful with my  
10 questions, Judge, because I don't know what this witness is  
11 about to testify to, and that's just a fact.

12 BY MR. BURKS:

13 Q       So sir, you answered that you acknowledged that a  
14 payment was -- whether you wanted to use submitted,  
15 tendered, made, but that it wasn't accepted.  What happened?  
16 Just tell us what happened.

17           MR. FITZMAURICE:  Objection.  Objection, Your  
18 Honor.

19           THE COURT:  I don't think he can tell me whether  
20 it's accepted or not.  You can say one side of the story.  
21 But --

22           THE WITNESS:  Let me -- maybe if I can address it  
23 this way.  First, Mr. Caldwell, with respect to that issue,  
24 there was a set of circumstances that took place where, as I  
25 understand it, and as was communicated to me at the time,

1 and this is not a privileged communication that's being  
2 disclosed, which is that Mr. Caldwell --

3 MR. FITZMAURICE: Your Honor, then objection. All  
4 of this is hearsay testimony that's designed to get into  
5 evidence what Your Honor excluded when we had Mr. Alexander  
6 on the stand on the same issue.

7 THE COURT: I'm going to overrule the objection.  
8 I'm going to let him testify.

9 Go ahead, sir.

10 THE WITNESS: Is that Mr. Caldwell contacted Mr.  
11 Choudhri and Mr. Choudhri's employee, Kelly Williams, and  
12 informed them that he had found out that the note that Mr.  
13 Choudhri was paying off was \$26 or \$27 million,  
14 substantially below the amount that the note was for. And  
15 as a result of that, he was not going to move forward with  
16 Mr. Choudhri.

17 MR. FITZMAURICE: Objection, Your Honor. The  
18 source of that information was Mr. Choudhri?

19 THE COURT: I don't know.

20 MR. FITZMAURICE: It's hearsay and --

21 THE COURT: It's hearsay, and it goes to weight.  
22 I take your objection.

23 Go ahead.

24 THE WITNESS: I mean, this --

25 MR. FITZMAURICE: Your Honor, there's no question

1 pending.

2 THE WITNESS: Right.

3 THE COURT: Okay. Go ahead.

4 BY MR. BURKS:

5 Q Do you have conversations with Mr. Caldwell?

6 A Mr. Caldwell would not return my call.

7 Q Hm? Did you --

8 A So the answer is no. The answer is no. Yeah.

9 Q Did you have conversations with the prospective  
10 financier or buyer after the settlement agreement was  
11 entered into?

12 MR. FITZMAURICE: Objection, Your Honor, vague.  
13 We're talking about, I think, different points in time, and  
14 we need to identify who these parties are.

15 THE COURT: Yeah. Be more specific, Mr. Burks.

16 BY MR. BURKS:

17 Q Subsequent to the settlement agreement, do you have  
18 personal knowledge as to why (indiscernible) a payment was  
19 made?

20 A Why what? I didn't hear you, sir. Why what?

21 Q Do you have personal knowledge as to whether a payment  
22 was made for \$26 million that you testified to earlier?

23 A So the first instance that I was aware of where a  
24 tender was attempted to be made was with Mr. Caldwell. The  
25 second instance has to do with Security State Bank, or I

1     can't remember the name of the bank, but it was a bank that  
2     Mr. Choudhri was dealing with to arrange financing to close  
3     on in order to pay the \$26 million, approximately \$26  
4     million.

5     Q     Did you personally (indiscernible) --

6             MR. FITZMAURICE:  Objection.  Objection, Your  
7     Honor.  The question was, was a payment made?  The answer  
8     was an entirely different topic.  And with respect to  
9     tender, there would be evidence of --

10            THE COURT:  I'll sustain your objection.

11            Go ahead and ask another question.

12     BY MR. BURKS:

13     Q     Is there -- are you aware -- is there -- who drafted  
14     that settlement agreement?

15     A     I can tell you that Mr. Conrad drafted portions of it,  
16     that my office drafted portions of it.  There were numerous  
17     lawyers involved.  Mr. Choudhri had other lawyers, and  
18     Galleria 2425 had other lawyers representing them at the  
19     time.  Allen Zwernemann was involved in drafting it.  Seth  
20     Nichamoff was involved in drafting it.  Mr. Conrad had an  
21     associate, which I can't remember his name, was involved in  
22     drafting it.  And there were lots of conversations.  In  
23     fact, the mediator, I think, was Mickey Mills.  Mickey Mills  
24     was involved in drafting that settlement agreement, and it  
25     was iterative.  Is that the right word?

1 MR. TROOP: Yes.

2 THE WITNESS: And we started -- we started at a  
3 mediation. And over the course of a number of days  
4 following that mediation, there were drafts sent back and  
5 forth. And then finally the document was signed whatever  
6 the date is on the document.

7 BY MR. BURKS:

8 Q And so without your giving any specifics as to your  
9 opinion on the weight of any disputes, is it fair to say, in  
10 your opinion, that there is now a dispute subsequent to  
11 enactment -- subsequent to execution of settlement  
12 agreement, as to whether or not Mr. Ali Choudhri or any of  
13 his entities performed on the \$27 or \$26 million payment?

14 MR. FITZMAURICE: Objection, Your Honor, lacks  
15 foundation. The question also said, I don't want you to  
16 give an opinion, but then said, what's your opinion?

17 THE COURT: I'll sustain the objection.

18 THE WITNESS: Yes.

19 THE COURT: I sustained the objection, sir.  
20 Strike that answer from the record.

21 THE WITNESS: I can't -- the problem, I can't hear  
22 with this (indiscernible) --

23 THE COURT: I apologize, but if we shut that, then  
24 the whole computer blows up (indiscernible) --

25 THE WITNESS: You're talking that way and it's

1 hard to hear with this (indiscernible) --

2 THE COURT: Is that better? Earlier it seemed too  
3 loud. Okay.

4 MR. BURKS: Your Honor, my final set of two  
5 questions will be to put a lawsuit up. Is this it? This is  
6 one of the lawsuits that the court has taken judicial notice  
7 of, and I'd like to see if I can get this question.

8 BY MR. BURKS:

9 Q Have you seen this document before, sir?

10 MR. FITZMAURICE: Objection, relevance. The point  
11 here is to get Mr. Wetwiska's opinion as to the merits of  
12 this case and whether it represents a bona fide dispute.

13 THE COURT: What's the relevance, Mr. Burks?

14 MR. BURKS: The relevance is to identify whether  
15 this document, whether this lawsuit, it arises from a  
16 dispute on who breached or whether anyone breached the terms  
17 of the settlement agreement that counsel has been talking  
18 about more than I have.

19 MR. FITZMAURICE: Well, then lacks foundation. We  
20 don't know whether Mr. Wetwiska has any knowledge about what  
21 this lawsuit is about, what its facts are, any of the  
22 underlying circumstances.

23 MR. BURKS: (indiscernible) my first question.

24 MR. FITZMAURICE: And in any event, Your Honor has  
25 already determined to take judicial notice of the --

1           THE COURT: I'm going to overrule the objection  
2     and let you ask the question that you asked, whether he has  
3     any knowledge of this litigation.

4           Go ahead, Mr. Burks. You can ask the question one  
5     more time.

6     BY MR. BURKS:

7     Q     Do you have any knowledge of this litigation, sir?

8     A     Can you go to the last page so I can see who signed it?

9     Q     Yes, sir.

10    A     I do have knowledge.

11    Q     Without stating whether you believe this lawsuit has  
12    merits, has damages, is good or bad, does this lawsuit arise  
13    out of a dispute as to whether or not the \$27 million was  
14    tendered?

15           MR. FITZMAURICE: Objection, Your Honor. The  
16    pleading speaks for itself. This is --

17           THE COURT: I'll sustain the objection. I think  
18    the settlement agreement and the pleadings speak for  
19    themselves, Mr. Burks.

20           MR. BURKS: Yes, Your Honor (indiscernible). I  
21    agree. I've read the prayer. It does speak for itself.  
22    Nothing further, Your Honor.

23           THE COURT: Happy to see that you agree with me,  
24    Mr. Burks, for once.

25           MR. BURKS: I hope we're right.



1 THE COURT: Mr. Choudhri? Mr. Choudhri, I'll warn  
2 you, you're on a very, very short leash. Okay.

3 DIRECT EXAMINATION OF JIM WETWISKA

4 BY MR. CHOUDHURI:

5 Q Mr. Wetwiska, I just want to clarify. You testified  
6 March 2022, I think. Did you mean March 2022 or did you  
7 mean March 2023?

8 MR. FITZMAURICE: Objection, leading.

9 THE COURT: I sustained the objection.

10 MR. CHOUDHURI: Well --

11 THE COURT: You can't suggest an answer to your  
12 question, Mr. Choudhri. I know you're not a lawyer, but ask  
13 the question that's open-ended.

14 BY MR. CHOUDHURI:

15 Q Mr. Wetwiska, earlier you testified that a timeframe,  
16 and I think you said March. Did you -- I'm trying my best  
17 not to -- because I heard 2022. I just want to clarify, did  
18 you mean 2022 or 2023?

19 A The timeframe that I was referring to would have been  
20 in the spring of 2023. The settlement agreement was signed  
21 in the fall of 2022.

22 Q Correct (indiscernible) so that was correct. And Mr.  
23 Wetwiska, you're aware of the settlement agreement  
24 (indiscernible) 1.6, Mr. Wetwiska?

25 A Yes, sir.

1 Q And it says Galleria, released parties means Galleria  
2 and all of its present or past present successor, including  
3 the (indiscernible) loan agreement. Do you see that?

4 A I do.

5 Q So when this agreement was signed, the Bank of Kuwait  
6 was releasing Galleria and all of its managers, members,  
7 including (indiscernible).

8 MR. FITZMAURICE: Objection, Your Honor. The  
9 document speaks for itself.

10 THE COURT: I'll sustain the objection.

11 BY MR. CHOUDHURI:

12 Q Are you aware that -- so did you ask National Bank of  
13 Kuwait for the loan sale agreement in the timeframe of Feb.  
14 to March 2023?

15 MR. FITZMAURICE: Objection, Your Honor, best  
16 evidence rule.

17 THE COURT: I'll sustain the objection.

18 BY MR. CHOUDHURI:

19 Q Did you have conversations with Mr. Conrad around  
20 spring of 2023?

21 MR. FITZMAURICE: Objection, Your Honor, hearsay,  
22 and also --

23 THE COURT: I'll sustain the objection.

24 BY MR. CHOUDHURI:

25 Q Was it not a requirement by the bank to provide a loan

1 sale agreement?

2 MR. FITZMAURICE: Objection, Your Honor, leading.

3 THE COURT: I'll overrule the objection. You can  
4 answer that question.

5 THE WITNESS: That was my understanding, yes.

6 BY MR. CHOUDHURI:

7 Q And did you ask them for a loan sale agreement?

8 MR. FITZMAURICE: Objection, Your Honor, best  
9 evidence rule.

10 THE COURT: I'll sustain the objection.

11 MR. SATHER: 499-44.

12 MR. CHOUDHURI: So 499?

13 MR. SATHER: 41.

14 MR. BAKER: 499-41.

15 BY MR. CHOUDHURI:

16 Q Are you aware that there was an offer made  
17 (indiscernible) in the end of June 2023 to purchase a note?

18 MR. FITZMAURICE: Objection, Your Honor, best  
19 evidence rule, also calls for a legal conclusion as to  
20 whether an offer specifically was made.

21 THE COURT: I'll sustain the objection.

22 MR. CHOUDHURI: Let me put up the document.

23 THE COURT: Please.

24 MR. BAKER: 499, what? 499-41?

25 THE COURT: The problem is -- we're off the

1 record.

2 (Recess)

3 BY MR. CHOUDHURI:

4 Q Mr. Wetwiska, do you know who Sonder is?

5 MR. FITZMAURICE: Objection, relevance, Your  
6 Honor.

7 THE COURT: What's the relevance?

8 MR. CHOUDHURI: Just the acts of the bank, Your  
9 Honor, (indiscernible) of performance.

10 THE COURT: I'll sustain the objection.

11 BY MR. CHOUDHURI:

12 Q Mr. Wetwiska, is this -- Mr. Wetwiska, did you receive  
13 this letter, dated June 28, 2023, from the Pillsbury law  
14 firm? Does this look familiar?

15 A Can you scroll down so I can read it? Can you go to  
16 the signature? I did receive it, yes.

17 Q And at the time you received this, you were  
18 representing me, correct?

19 A Correct, Mr. Choudhri.

20 Q And have you went back and checked your records since  
21 the receipt of this letter, if there was ever a subsequent  
22 letter that withdrew this letter?

23 A There was no withdrawal of this letter by anyone.

24 MR. CHOUDHURI: I'd like to submit this letter to  
25 the record, Your Honor.

1 THE COURT: ECF number?

2 MR. FITZMAURICE: Your Honor, it's 499.36.

3 There's no objection.

4 THE COURT: All right. 499-36 is admitted.

5 (Trial Exhibit 499-36 entered into evidence)

6 THE COURT: Mr. Choudhri, next question. It was  
7 actually 36.

8 BY MR. CHOUDHURI:

9 Q Mr. Wetwiska, on the confidential settlement agreement,  
10 did your firm draft the confidentiality provisions?

11 MR. FITZMAURICE: Objection, Your Honor,  
12 relevance. And I think the witness already testified.

13 THE COURT: Asked and answered. I'll sustain the  
14 objection. Thank you.

15 BY MR. CHOUDHURI:

16 Q Was there a confidentiality provision?

17 MR. FITZMAURICE: Objection, Your Honor, best  
18 evidence.

19 THE COURT: I'll sustain the objection.

20 MR. CHOUDHURI: I'll pull up the document.

21 THE COURT: Well, the document also speaks for  
22 itself, Mr. Choudhri. I can read it. Thank you. And I  
23 really am trying to get your ex- lawyer or former lawyer out  
24 of here as quickly as possible.

25 BY MR. CHOUDHURI:

1 Q Mr. Wetwiska, are you aware that that offer was  
2 accepted that was made at the end of June by me?

3 MR. FITZMAURICE: Objection, Your Honor, best  
4 evidence again.

5 THE COURT: I'll sustain the objection.

6 BY MR. CHOUDHURI:

7 Q Do you have any knowledge of -- do you have knowledge  
8 of multiple attempts to pay the bank being made?

9 THE COURT: Objection, Your Honor.

10 THE WITNESS: Yes.

11 THE COURT: What's the objection, please?

12 MR. FITZMAURICE: If there -- if there are  
13 attempts to pay the bank, then there will be a document that  
14 shows that.

15 THE COURT: Yeah. I'll sustain the objection.

16 BY MR. CHOUDHURI:

17 Q Mr. Wetwiska, as we're sitting here today, you're still  
18 representing me in other matters?

19 A I am representing you in a different matter. Yes.

20 Q Yes. So we still retain an attorney-client privilege.

21 MR. FITZMAURICE: Objection, relevance, Your  
22 Honor.

23 THE WITNESS: I think we --

24 THE COURT: I'll sustain the objection --

25 THE WITNESS: -- we have it no matter what.

1 MR. CHOUDHURI: Thank you.

2 BY MR. CHOUDHURI:

3 Q Mr. Wetwiska, I just want to make sure we have this.

4 You've seen a letter from Pillsbury at ECF 251-11?

5 MR. FITZMAURICE: Your Honor --

6 THE COURT: Best evidence?

7 MR. FITZMAURICE: Yeah, asked and answered. This  
8 exhibits is in evidence.

9 BY MR. CHOUDHURI:

10 Q Have you seen this letter before, Mr. Wetwiska, that  
11 was forwarded to you?

12 MR. FITZMAURICE: Objection, Your Honor, leading,  
13 as to it was forwarded to you, but also relevance as to  
14 whether or not Mr. --

15 THE COURT: I'll sustain the objection. Thank  
16 you.

17 BY MR. CHOUDHURI:

18 Q Mr. Wetwiska, are you familiar with a letter dated  
19 April 28th that was --

20 THE COURT: I've already sustained the objection.  
21 If you want to get it in, you've got to do it some other  
22 way. But I've sustained the objection. I'm not going to  
23 admit that based on his testimony.

24 BY MR. CHOUDHURI:

25 Q Can you describe the occurrences of the interference by

1 the Bank of Kuwait from the debtor or me performing to pay  
2 the \$26 million?

3 MR. FITZMAURICE: So objection, leading, as to  
4 interferences, lacks foundation, assumes facts not in  
5 evidence. It also, I think, asks Mr. Wetwiska to reveal his  
6 own work product as to his legal conclusions as to whether  
7 or not those tests have been satisfied.

8 THE COURT: I'll sustain the objection based on  
9 lack of foundation.

10 BY MR. CHOUDHURI:

11 Q Mr. Wetwiska, you've had conversations and  
12 communications with Mr. Conrad, that Mr. Conrad represents  
13 the Bank of Kuwait, correct?

14 MR. FITZMAURICE: Sorry. Objection, compound.  
15 Which is the question?

16 THE COURT: Ask the question one at a time, Mr.  
17 Choudhri.

18 BY MR. CHOUDHURI:

19 Q Does Mr. Conrad represent the Bank of Kuwait -- the  
20 National Bank of Kuwait?

21 A That's my understanding, yes.

22 Q And most of the communications dealing with this  
23 transaction have been with you and Mr. Conrad?

24 MR. FITZMAURICE: Objection, Your Honor --

25 THE WITNESS: I think that's --



1 MR. FITZMAURICE: Objection, Your Honor, vague as  
2 to this transaction and also relevance to whether or not the  
3 bank's entitled to credit bid at the auction tomorrow.

4 THE COURT: I'll allow the answer to that question  
5 and then you can urge your objection. I want to know where  
6 Mr. Choudhri is going. You can answer that question.

7 THE WITNESS: I think it's accurate to state that  
8 the conversations were mainly between me and Mr. Conrad.

9 BY MR. CHOUDHURI:

10 Q So to complete a transaction or consummate a  
11 transaction, whether it's the actual deal documents that on  
12 a closing that get done, that would be communications, phone  
13 conversations or communications you had with Mr. Conrad,  
14 correct?

15 A In the beginning, they were by phone. As things became  
16 contentious over the summer of 2023, I think that Mr. Conrad  
17 and I started putting more things in writing. But prior to  
18 that, there was more of a dialogue between the two of us,  
19 and there was obviously a dispute that arose in the summer  
20 of 2023 with respect to the settlement agreement and those  
21 things. We ended up trying to document as much as possible,  
22 was my view.

23 Q And so, following up on that question, one of the  
24 material elements of completing the loan sale acquisition  
25 would be a loan sale agreement, correct?

1 MR. CHOUDHURI: Objection, leading.

2 THE COURT: I'll sustain the objection.

3 BY MR. CHOUDHURI:

4 Q What material document would be needed to consummate a  
5 loan sale?

6 MR. FITZMAURICE: Objection, as to material.

7 THE COURT: I'll overrule the objection.

8 THE WITNESS: Well, we needed a loan sale  
9 agreement. We needed what is called, I think, an allonge is  
10 the right word. There was one other document, and in order  
11 to consummate it, those documents had to be approved and  
12 satisfactory to the National Bank of Kuwait.

13 BY MR. CHOUDHURI:

14 Q And did you ask Mr. Conrad for those documents around  
15 the Feb./March 2023 timeframe?

16 MR. FITZMAURICE: Objection, Your Honor, best  
17 evidence.

18 THE COURT: I'll sustain the objection.

19 BY MR. CHOUDHURI:

20 Q So your conversations, I think you said, were mainly  
21 verbal, and then later, when things got contentious, they  
22 were in writing.

23 A Right --

24 MR. FITZMAURICE: Objection, Your Honor, leading.

25 THE COURT: I'll sustain the objection.

1 BY MR. CHOUDHURI:

2 Q What would be necessary -- I just asked this and so I  
3 won't ask it again. Sorry. Are you aware of Security State  
4 Bank of Texas, who that is?

5 A Yes.

6 Q Do you recall having some conversations with Security  
7 State Bank of Texas?

8 A Numerous conversations, yes.

9 Q And what is the first thing they needed to move forward  
10 to fund the loan takeout?

11 MR. FITZMAURICE: Objection, Your Honor, lacks  
12 foundation is to fund the loan takeout. Also hearsay as to  
13 any communications with the bank.

14 THE COURT: I'll sustain the objection as to  
15 hearsay.

16 BY MR. CHOUDHURI:

17 Q Did the settlement agreement have further assurances  
18 provisioned where things that need to get done to consummate  
19 a transaction, parties have to act in good faith to do so?

20 MR. FITZMAURICE: Objection, Your Honor, best  
21 evidence.

22 THE COURT: Again, the document speaks for itself.

23 BY MR. CHOUDHURI:

24 Q Are you aware of Security State Bank being ready,  
25 willing and able to finance the loan sale from the National

1 Bank of Kuwait?

2 MR. FITZMAURICE: Objection, Your Honor, lacks  
3 foundation, also hearsay as to the conduct of the bank.

4 THE COURT: I'll sustain the objection.

5 BY MR. CHOUDHURI:

6 Q About how many times did you ask for a loan sale  
7 agreement?

8 MR. FITZMAURICE: Objection, Your Honor, hearsay  
9 offered for the truth, to prove the truth of the matter.  
10 Also, if there were requests, we should be able to look at  
11 the emails or other correspondence related to that.

12 THE COURT: I'll allow you to answer the question  
13 as to did you make any email requests?

14 THE WITNESS: I did, yes.

15 THE COURT: How many times?

16 THE WITNESS: It would have been somewhere during  
17 the time of February or March of 2023 and then in connection  
18 with the security or -- can you restate the --

19 MR. CHOUDHURI: Security State Bank.

20 THE WITNESS: Security State bank during the  
21 conversations with Mr. Conrad on a security statement. So  
22 those would have been the two oral, the only two times that  
23 I remember orally. As I said, in the summer, Mr. Conrad was  
24 interested in talking to us really. Things got heated at  
25 the courthouse.

1 MR. FITZMAURICE: Your Honor, I think we've gone  
2 far afield from what the question was.

3 THE WITNESS: And so we --

4 THE COURT: Yeah. I asked the question. So I'll  
5 cut you off.

6 THE WITNESS: Okay.

7 THE COURT: Thank you. Go ahead and ask the next  
8 question.

9 BY MR. CHOUDHURI:

10 Q Do you know any reason why the Bank of Kuwait would not  
11 provide a loan sale agreement, which is a transactional  
12 document to consummate the deal?

13 MR. FITZMAURICE: Objection, Your Honor. The  
14 witness has -- calls for speculation. The witness has no  
15 way to know.

16 THE COURT: There's no foundation.

17 MR. FITZMAURICE: Yeah.

18 THE COURT: I'll sustain the objection.

19 BY MR. CHOUDHURI:

20 Q The settlement agreement -- so let me back up. Your  
21 request for the loan sale agreement from Charles Conrad was  
22 within the period allotted to pay the bank the \$26 million?

23 A Yes.

24 Q So that period had not expired, the settlement payment  
25 date had not come and gone at that point, correct?

1 A Correct.

2 Q And then you asked him for the loan sale agreement in  
3 writing possibly later. I think maybe around June. Is that  
4 --

5 MR. FITZMAURICE: Objection, Your Honor, leading.

6 THE COURT: I'll sustain the objection. You can't  
7 suggest the answer to your question, Mr. Choudhri.

8 BY MR. CHOUDHURI:

9 Q Are you aware that -- did you -- are you aware that  
10 when the district court stopped -- let me back up. Did the  
11 Bank of Kuwait move to appoint a receiver in the spring of  
12 2023?

13 A They moved to appoint either receiver or  
14 conservatorship or one of those two things during the time  
15 period that we were discussing with Security State Bank  
16 providing the funding, yes.

17 Q And were you on conversations with Security State Bank  
18 when they said to move forward they needed a loan sale  
19 agreement?

20 A Yes.

21 Q So that was a requirement by Security State Bank is we  
22 need a loan sale agreement before we can proceed.

23 A Correct.

24 MR. FITZMAURICE: Objection, hearsay.

25 THE COURT: It's hearsay, and I'll sustain the

1 objection. Sorry.

2 A Which one's Chris?

3 BY MR. CHOUDHURI:

4 Q Do you recall who the receivership -- was it  
5 (indiscernible) --

6 MR. FITZMAURICE: Objection, relevance.

7 THE COURT: I'll sustain the objection as to  
8 relevance.

9 BY MR. CHOUDHURI:

10 Q Are you aware that there is a pending lawsuit for the  
11 breach of contract of the settlement agreement?

12 MR. FITZMAURICE: Objection, Your Honor, lacks  
13 foundation.

14 THE COURT: I'll sustain the objection.

15 BY MR. CHOUDHURI:

16 Q Was the payment, the down payment made in the  
17 settlement agreement?

18 A Yes.

19 Q So the payment outstanding is the \$26,038,000?

20 MR. FITZMAURICE: Objection, lacks foundation.

21 THE COURT: I'll overrule the objection.

22 BY MR. CHOUDHURI:

23 Q Do you have any belief or do you have any knowledge or  
24 understanding of why the bank refused to accept the \$26  
25 million?

1           MR. FITZMAURICE:  Objection, Your Honor, calls for  
2   speculation and assumes facts not in evidence.

3           THE COURT:  I'll sustain the objection.  Thank  
4   you.

5   BY MR. CHOUDHURI:

6   Q     Mr. Wetwiska, do you have kind of a background of what  
7   my challenges have been?

8           MR. FITZMAURICE:  Objection, relevance, Your  
9   Honor.

10          THE COURT:  I'll sustain the objection.

11   BY MR. CHOUDHURI:

12   Q     Do you have any knowledge of the structure of the loan  
13   designed by the bank?

14          MR. FITZMAURICE:  Same objection, Your Honor.  It  
15   also assumes facts not in evidence.

16          THE COURT:  I'll sustain the objection.

17   BY MR. CHOUDHURI:

18   Q     Were you successful in getting depositions compelled in  
19   the state court case?

20   A     Yes.

21          MR. FITZMAURICE:  Objection, Your Honor,  
22   relevance.

23          THE COURT:  It's not relevant.  I'll sustain the  
24   objection.  Again, you're reading on thin ground, Mr.  
25   Choudhri.  I'm giving you a lot of leeway.  Ask questions



1     that are relevant to what we want to hear or I'm going to  
2     cut you off.

3     BY MR. CHOUDHURI:

4     Q     Did you have conversations with the trustee in this  
5     case regarding the issues with the National Bank of Kuwait?

6     A     The Chapter 7 trustee, 11 trustee?

7     Q     Chapter 11 trustee, Chris Murray.

8     A     Chris Murray. I did, yes, and his counsel.

9     Q     And do you remember who all was on this call?

10           MR. FITZMAURICE:  Objection, Your Honor, relevance  
11     to whether the bank can credit bid tomorrow.

12           THE COURT:  Yeah.  I'll sustain the objection.  
13     It's not relevant.

14     BY MR. CHOUDHURI:

15     Q     When the bank -- if at any time they did provide a loan  
16     sale, do you have any knowledge of the bank's interference  
17     with lease up of the building --

18           MR. FITZMAURICE:  Objection, Your Honor.

19     BY MR. CHOUDHURI:

20     Q     -- after the settlement was entered?

21           MR. FITZMAURICE:  Objection, Your Honor, as to  
22     leading, as to interference.

23           THE COURT:  Say that again.  I didn't hear you.

24           MR. FITZMAURICE:  Leading us to the use of the  
25     term interference.  Also assumes facts that are not in

1 evidence and lacks foundation.

2 THE COURT: I'll sustain the objection.

3 You get one more question, Mr. Choudhri, before I  
4 cut you off. Make it a good one.

5 BY MR. CHOUDHURI:

6 Q Were there proposals, lease proposals that you were  
7 involved in where the bank was being asked to approve and  
8 they were not cooperative?

9 MR. FITZMAURICE: Objection, vague as to time. If  
10 any proposals, would be in writing and we could look at that  
11 as best evidence, also lacks foundation.

12 THE COURT: I'll sustain the objection, Mr.  
13 Choudhri.

14 MR. CHOUDHURI: No more questions.

15 THE COURT: Thank you.

16 MR. CHOUDHURI: Pass the witness.

17 THE COURT: All right. Thank you.

18 Mr. Fitzmaurice?

19 MR. FITZMAURICE: With the court's permission,  
20 I'll have my partner, Mr. Conrad, cross-examine the witness.

21 THE COURT: Sure. That's fine. I just want to  
22 get Mr. Wetwiska out of here. So if we can finish with him,  
23 I'd appreciate it.

24 MR. CARTER: And I'll do it very quickly, Your  
25 Honor.

1 THE COURT: That's fine. Come on over.

2 MR. CONRAD: So 499-41.

3 MR. FITZMAURICE: And Your Honor, I think I'll be  
4 projecting from over here.

5 THE COURT: That's fine. Thank you.

6 CROSS-EXAMINATION OF JIM WETWISKA

7 BY MR. CONRAD:

8 Q Good afternoon, Mr. Wetwiska.

9 A Good afternoon.

10 Q I understand you need to get out of here pretty  
11 quickly, so I'm going to try to make this quick.

12 A Take your time.

13 Q All right. Well, it's good to see you again.

14 A I'm happy to help the court out.

15 Q All right. Well, I just wanted to start by getting  
16 some like dates right, as much as we can. So you understand  
17 that the settlement agreement was August of 2022, correct?

18 A Yes.

19 Q All right, and I understand the document, but you  
20 understand that there was a period of time for performance  
21 by Choudhri Galleria 2425 or some other buyer. What was  
22 that date or what was that timeframe?

23 A I believe it was March 20, 2023. But you can look at  
24 the document.

25 Q Right. I mean, the document says that there was 210

1 days for performance.

2 A Yeah, I'd defer to the document, but it was -- we  
3 negotiated hard on that provision.

4 Q Right. Seven months, right?

5 A I think -- I think there about. Yes, sir, Mr. Conrad.

6 Q All right. Did Choudhri or any of the Choudhri  
7 entities, the debtor, Galleria 2425 Owner, LLC, ever tender  
8 full payment during that 210 days?

9 A They never presented a check during that time period.

10 Q Did they ever present anything saying that we will pay  
11 you the \$26 million and change, which is the difference  
12 after the credits, within that 210 days?

13 A I don't remember one way or the other.

14 Q Okay. So after March 20, 2023, there was a notice of  
15 default letter issued by the bank to the debtor. Do you  
16 remember that?

17 A Yes.

18 Q Okay. Do you remember -- let me go back and ask you  
19 some questions about Mr. Paul Caldwell. Have you ever  
20 spoken to Mr. Paul Caldwell?

21 A Never.

22 Q Okay. Do you know who he is?

23 A I know generally who he is. I know he was -- he's an  
24 investor. But I've never spoken to him. I've tried to  
25 reach out to him. He did not return my calls.

1 Q Do you recall in the January, February, early March  
2 2023 timeframe that I reached out to you and stated that Mr.  
3 Paul Caldwell had contacted?

4 A I don't remember if you reached out to me or if I asked  
5 you if he had. I don't remember how that happened. It was  
6 one way or the other. But I do remember there was a  
7 conversation by us about Mr. Caldwell, and you forwarded  
8 something to me. I do remember that.

9 Q Do you recall that, going back to April of 2023, you  
10 were asked questions about the appointment or the motion to  
11 appoint a receiver? Do you recall when that hearing day was  
12 scheduled being around April 12, 2023?

13 A I don't remember. I mean, if you have the date, I  
14 don't remember the date.

15 Q Sure, we can pull it up, but it's not material. So the  
16 point is that you recall that there was a new lawsuit filed  
17 against the bank immediately before the hearing on the  
18 motion to appoint receiver and that there was a request for  
19 temporary restraining order filed by Galleria 2425 Owner,  
20 LLC. Do you recall that?

21 A Mr. Conrad, I don't remember the date. I do remember,  
22 at some point, I think Mr. Harrison filed that lawsuit; is  
23 that correct?

24 Q Do you remember appearing in that case? I didn't --  
25 let me strike that. Do you remember a lawsuit being filed

1 by Galleria 2425 seeking a temporary restraining order  
2 against the bank?

3 A If you can show it to me, that'd be helpful.

4 Q Okay. But you don't recall any discussions between you  
5 or anybody on behalf of the bank between the January,  
6 February, early March timeframe ever raising any concern  
7 about this alleged issue involving Paul Caldwell and the  
8 bank --

9 MR. BURKS: Objection.

10 BY MR. CONRAD:

11 Q -- prior to that lawsuit being filed?

12 MR. BURKS: Objection, Your Honor. So at this  
13 point, I think we've established that there's a dispute  
14 between the parties for the same reasons that I don't intend  
15 to try the suit today. And it sounds like we're beginning  
16 to try it. The other side dutifully objected. I've  
17 listened as long as I need to, to understand that there's a  
18 dispute between the parties. A substantial one.

19 THE COURT: I'll overrule the objection. Go  
20 ahead.

21 MR. CONRAD: Okay.

22 THE COURT: You can re-ask the question.

23 MR. CONRAD: Sure. I'll move on.

24 BY MR. CONRAD:

25 A So, in June of 2023, you were asked -- you were shown a

1 letter to you regarding documents being sent to you, or  
2 would be prepared to you, to your client, regarding the  
3 actual closing of July 3, 2023. Do you remember that  
4 document?

5 A I do.

6 Q Okay. The July 3, 2023 date is the date the state  
7 court gave the parties, your team, Choudhri, Galleria 2425  
8 or some other purchaser to actually close on that property  
9 by that date; is that true?

10 A It's around that time period. I don't remember the  
11 exact date. It was before the 4th of July.

12 Q Do you recall any evidence whatsoever of any entity,  
13 either Galleria 2425, or any other entity related to  
14 Choudhri or somebody on his behalf, tendering any type of  
15 payment whatsoever prior to July 3, 2023?

16 A Between June 28th and July 3.

17 Q Or any time before that, between April of 2023 through  
18 July 3, 2023?

19 A I mean, I certainly remember State Security Bank and  
20 trying to tender the information and the conversations we  
21 had with the bank and conversations about whether or not the  
22 Bank of Kuwait was going to extend the March 20th deadline  
23 to even accept any additional money from any of the  
24 signatories to the settlement agreement past March 20th,  
25 yes.

1 Q I want to show you what we're included on our exhibit  
2 list. I'm going to bring up 498-01. This is a transcript,  
3 but the hearing that we were talking about earlier, which  
4 involved the appointment of the receiver originally.

5 A Okay.

6 Q But prior to that, or just prior to that, the day  
7 before, there was a request for a temporary restraining  
8 order on a new lawsuit that was filed by the debtor here  
9 against the Bank of Kuwait. And specifically, I want you to  
10 go to the page where there was a representation made by you,  
11 Mr. Wetwiska, on behalf of the debtor, Galleria 2425, that  
12 stated that all you needed, or all your client needed, was  
13 extra time in order to consummate a deal of the settlement  
14 agreement. Do you recall making that statement?

15 A Can you -- I'm not sure. You asked me if the  
16 transcript --

17 Q I'm just asking if you recall making that  
18 representation to the court.

19 A Well, I remember telling the court that in order for  
20 there to be any ability for the transaction to be  
21 consummated, that additional time would be required. Right.

22 Q And this is after the 210 days under the settlement  
23 agreement had already expired on March 20th, correct?

24 A Correct.

25 Q And so between the time of March 20th and July -- I'm



1     sorry, April 12th, that's when the court granted your  
2     request to give additional time to the debtor to close and  
3     consummate the settlement agreement on or before July 3rd.  
4     Do you recall that?

5     A     So can you show me the exact ruling by the court?  Is  
6     it in the transcript?

7     Q     Sure.  You don't recall it from memory?

8     A     No.  I'm trying to remember exactly what the court's  
9     ruling was.  In fairness, I got this subpoena on Friday.  I  
10    did not go back and review all the records.  No one  
11    forwarded me the pleadings.

12    Q     Give me a second.

13    A     Sure.

14                 MR. CONRAD:  Your Honor, may I step away for just  
15    a second?

16                 THE COURT:  Sure.  Feel free.

17                 MR. CHOUDHURI:  How do I object?  Do I come up  
18    here?

19                 THE COURT:  If you want to object, you can object  
20    at any point in time, Mr. Choudhri.  Just come forward and  
21    object.

22                 MR. CHOUDHURI:  Okay.  Thank you  
23    (indiscernible) --

24                 THE COURT:  As long as you're by a microphone.  In  
25    other words, anything that you say is being electronically

1 recorded. If you're not by a microphone, we can't hear you.  
2 So just basically stand up and object.

3 MR. CHOUDHURI: Okay.

4 THE COURT: Okay.

5 MR. CHOUDHURI: Thank you.

6 THE COURT: All right.

7 MR. BURKS: Give him a mic. Right here, Ali.

8 MR. CONRAD: So if you'll scroll up, just for  
9 purposes of the record, this is again ECF 498-01. This is  
10 Page 72 of the hearing, and specifically it says here, the  
11 highlighted portion, beginning on Line 10:

12 "The Court: My inclination is to give you 60  
13 days, required payments of 80,"

14 THE WITNESS: Right.

15 MR. CONRAD: "And then with a foreclosure the  
16 first Tuesday of July, so that there's some money going to  
17 them. And it's a lot compared to what you owe. And if you  
18 don't get it done, well, then if you don't get it done, they  
19 foreclose, they're done. I don't see you again. You don't  
20 see each other again because you've said on the record as an  
21 officer of the court, that given more time, that if they  
22 can't get it done, then they can foreclose. I'm taking you  
23 at your word, Mr. Wetwiska."

24 Do you see that?

25 THE WITNESS: I do. I think what I'm telling the

1 court is we have a duty to mitigate under the law, as you're  
2 aware. And what we were trying to do is do everything  
3 possible to mitigate the damages that have been caused. And  
4 so part of that mitigation was trying to get additional time  
5 to pay the note. Of course, the Bank of Kuwait's position  
6 was, is that the note and agreement was no longer in effect.  
7 And that was the dispute during the spring and summer of  
8 2023. And that was the problem. It was trying to mitigate.  
9 And then we later went to mediation in July, I think, as  
10 part of that process also. I'm sorry. We went --

11 MR. CONRAD: (Indiscernible)

12 THE WITNESS: We went to mediation in June. I  
13 think we went to mediation like the second week of June,  
14 maybe.

15 BY MR. CONRAD:

16 Q Again, let me go back to my question.

17 A Sure.

18 Q The point is that the debtor here, nobody on behalf of  
19 the debtor ever tendered a full performance or offer by the  
20 July 3, 2023 deadline that's set by the court, true?

21 A I think it's true that after -- well, wait? I don't  
22 know. I don't remember the time of Security State Bank and  
23 those conversations. I don't remember if that was before or  
24 after April 12th. I don't know the answer to that. I mean,  
25 if you have a document, I'm happy to look at it. It was --

1 I suspect it was after April 12th, because the closing -- I  
2 mean, the first date was March 20th. I know the Security  
3 State Bank conversations were in April. I know you and I  
4 had conversations about whether or not the bank would even  
5 accept the payment. We had a number of calls. You and I  
6 had a lot of calls over a long time period. We got to know  
7 each other well. But we had a number of calls about that.  
8 And at some point, I think that I had asked you to just go  
9 to the bank to figure out if they were willing to give  
10 additional time or not. And I don't remember if the answer  
11 was before or after this hearing, but I think after the  
12 12th, there were additional conversations about Security  
13 State Bank and the bank providing financing. That's my  
14 recollection.

15 Q Are you speculating about that? Because you said you  
16 didn't remember.

17 A No, I'm telling you I'm not speculating. I wouldn't  
18 call it speculation. What I'm trying to do is that's the  
19 best of my recollection as to the time period.

20 Q Okay. You don't recall any of those conversations  
21 happening before April 12, 2023?

22 A I definitely think some of them happened before, for  
23 sure.

24 Q All right. Well, let's move on to let me show you  
25 what's been marked this Exhibit 499-41 on our exhibit list.

1 A All right.

2 Q Do you recognize this document or the title of the  
3 letterhead?

4 A Can you show me the document? Let me see who signed  
5 it. Okay. I am familiar with it, yes.

6 MR. CONRAD: Okay. We'd move to admit this  
7 document into evidence, Your Honor. This is ECF --

8 THE COURT: 499-41?

9 MR. CONRAD: Yes, Your Honor.

10 THE COURT: Any objection to 499-41, from any  
11 party?

12 MR. BURKS: None.

13 THE COURT: Mr. Choudhri?

14 MR. CHOUDHURI: No.

15 THE COURT: All right. Then it's admitted. Thank  
16 you.

17 (Trial Exhibit 499-41 entered into evidence)

18 MR. CONRAD: Thank you, Your Honor.

19 BY MR. CONRAD:

20 Q This is a letter, we'll scroll up real quick, dated  
21 June 28, 2023, correct?

22 A Correct.

23 Q This is a letter from you to me requesting information  
24 about agreements or draft agreements, also confirming the  
25 actual number. As far as what the payoff of the settlement

1 agreement is, true?

2 A True.

3 Q Were those documents provided to you?

4 A There was a -- they were provided to me in a fashion  
5 that said, in a form agreement that said, subject to further  
6 review or some type of further confirmation or approval by  
7 the bank. Like they were not in any type of final form, and  
8 they were subject to further approval.

9 Q But this document --

10 A I thought was very strange.

11 Q But this document contemplates that, again, it's making  
12 a confirmation of the settlement of payment agreement amount  
13 as extended by the state court judge on or before July 3,  
14 2023; is that correct?

15 A Well --

16 Q It says it in number one there.

17 A What I will say is this letter followed the mediation  
18 that we had on about June the 12th. And there were numerous  
19 offers made during the mediation. And at the mediation, the  
20 position was by the bank that payment could be made by July  
21 3, 2023. And so when you say extended by the court, my  
22 understanding was in sending this is that this was the offer  
23 that was made through the mediation process and that's why  
24 this was sent.

25 Q Where does it say that?

1 A Where does it say what?

2 Q What you just said. Where does this document in any  
3 place whatsoever say what you just said?

4 A What It says, July 3, 2024 --

5 MR. CHOUDHURI: Objection.

6 BY MR. CONRAD:

7 Q And that's the date that the court said -- we just  
8 looked at the transcript.

9 THE COURT: Hold on one second. Mr. Choudhri  
10 wants to object.

11 What do you want to object to, Mr. Choudhri?

12 MR. CHOUDHURI: Objection. It's optional  
13 completeness. There's a whole series of communications and  
14 attachments. He's just trying (indiscernible) to take it  
15 out, including the whole record that I'm looking at, Your  
16 Honor.

17 THE COURT: I'm going to overrule that objection.  
18 Go ahead.

19 MR. CONRAD: Sure.

20 BY MR. CONRAD:

21 Q I think again, where does it say anything about  
22 mediation offer extended? You know, we looked at the court  
23 transcript and set the date. They're extending the time for  
24 performance over NBK's objection to July 3, 2023. You know  
25 that, true?

1 MR. BURKS: Objection, argumentative.

2 THE COURT: I'll overrule that objection. I want  
3 an answer to the question. Thank you.

4 THE WITNESS: Absolutely. There's no question  
5 whatsoever with that the court gave us -- the court said you  
6 have until July 3rd to make the payment. The critical date  
7 was the -- when the sale would be, right? So the sale was  
8 going to be July 5th; is that right? Whatever the Tuesday  
9 was, it was going to be. Maybe the 4th of July was on a  
10 Tuesday, Your Honor. So the sale is always the first  
11 Tuesday of the month. So I think it got pushed back to the  
12 second Tuesday. There were issues. The issue with July 3rd  
13 was we were worried about bank holiday and trying to get the  
14 money in by July 3rd. What the mediation did is that the  
15 bank confirmed that they were willing to do this agreement.  
16 Because the whole point of (indiscernible) --

17 MR. CONRAD: Objection. Your Honor, I'm going to  
18 object as to nonresponsive to everything after he said yes  
19 to my question.

20 THE COURT: I'll sustain the objection. You're  
21 going to go back around, unfortunately. So you're going to  
22 be here for a while. Go ahead. Go ahead.

23 MR. CONRAD: I don't think I have any further  
24 questions, Your Honor.

25 THE COURT: Okay, then I'll go to Mr. Burks.



1           MR. BURKS: Your Honor, will you take judicial  
2 notice that July 4, 2023 was a Tuesday, the first Tuesday of  
3 the month of July?

4           THE COURT: I think I can take judicial notice of  
5 the calendar. Sure.

6                       REDIRECT EXAMINATION OF JIM WETWISKA

7 BY MR. BURKS:

8 Q       So this door is wide open. What happened?

9           MR. FITZMAURICE: Objection, Your Honor.

10          THE COURT: That asks for narrative. Be specific,  
11 Mr. Burks.

12 BY MR. BURKS:

13 Q       What happened in the time period of July 2, 3, 4, 5  
14 regarding the payments that you were trying to talk about  
15 and the counsel was asking about?

16 A       I'm trying to answer this, Your Honor, that doesn't  
17 disclose attorney-client communication, which is involved  
18 here. Is there -- can you --

19 Q       Sir --

20 A       In your question, I get it, can you try to do it in a  
21 way which maybe it doesn't require me to disclose attorney-  
22 client communications?

23 Q       Sure. There was the letter.

24 A       The June 28th letter.

25 Q       The June 28th letter.

1 A Correct.

2 Q There was a mediation, correct?

3 A There was a mediation on or about June 12th. Yes, it  
4 was a Zoom with Diana Marshall.

5 Q Pursuant to a letter, pursuant to the mediation, what  
6 did you try and get done as far as the payments?

7 A There were numerous conversations. As I understood it,  
8 the clients were in the process of discussing with numerous  
9 individuals.

10 Q Which clients?

11 MR. FITZMAURICE: Objection, hearsay as to those  
12 conversations, Your Honor.

13 THE COURT: I'll sustain the objection.

14 BY MR. BURKS:

15 Q You mentioned the bank, the name of the bank and the  
16 name of a finance unit. What was the name you mentioned?

17 A Security State Bank.

18 Q Did you speak with Security State Bank?

19 A Oh, yes.

20 Q All right, and so what was Security State -- what were  
21 you and Security State Bank trying to get done as far as  
22 making a payment?

23 MR. FITZMAURICE: Objection, Your Honor, this has  
24 all been asked and answered, but also hearsay as to comments  
25 by Security State Bank.

1           THE COURT: I'll overrule the objection. You can  
2 answer the question.

3           THE WITNESS: Trying to get financing put in place  
4 in order to make the \$26 million and change payment.

5 BY MR. BURKS:

6 Q And were you successful?

7 A No.

8 Q Why not?

9 A There were numerous reasons. The filing of the  
10 conservatorship/receivership was probably the biggest issue,  
11 in my view.

12 Q Who filed it?

13 A The Bank of Kuwait. So once that was filed, it  
14 essentially, from what I could tell, chilled the entire  
15 process.

16 Q Any other things that precluded the (indiscernible)  
17 with the bank?

18 A I can tell you what I observed.

19 Q Please, and only what you observed.

20 A Only what I observed. The other things that I observed  
21 were the article in the -- the May 2023 article in the  
22 DealBook about the foreclosure. I think that there was a  
23 foreclosure filed by the bank for June. I think after in  
24 May --I think sometime in May, they (indiscernible) --

25 MR. FITZMAURICE: So Your Honor, objection as to

1 filings that may or may not have happened. Again,  
2 there's -- if there are filings, there are records of those  
3 that the court should consider. Otherwise --

4 THE COURT: I'll sustain the objection as to  
5 anything that basically got filed that I haven't seen.

6 Go ahead, Mr. Burks.

7 BY MR. BURKS:

8 Q What else happened, in your opinion, to stop the deal  
9 for financing that you were working on in June, July 2023?

10 MR. FITZMAURICE: Objection, Your Honor, calls for  
11 speculation.

12 THE COURT: I'll sustain the objection.

13 BY MR. BURKS:

14 Q Do you have knowledge as to what happened? Were you  
15 involved in it?

16 MR. FITZMAURICE: Objection, vague as to what  
17 happened.

18 THE COURT: Be more specific, Mr. Burks.

19 BY MR. BURKS:

20 Q Were you working on getting financing approved and paid  
21 to National Bank of Kuwait in that time period between, say,  
22 July 1 through July 5 or 6, 2023.

23 A Mr. Burks?

24 Q Yes.

25 A I was trying to assist these clients during June, May,

1 April, March all the way up to the 1st of July, yes.

2 Q Okay. Were you successful?

3 A No.

4 Q Why not?

5 MR. FITZMAURICE: Objection, Your Honor, what  
6 happened --

7 MR. BURKS: It goes to weight.

8 THE COURT: Well, there's been an objection. But  
9 I don't know what he's objecting against. What's your  
10 objection based on?

11 MR. FITZMAURICE: The question is what happened,  
12 which calls for a narrative response by the witness as to  
13 events that we -- that we don't know whether he has any --  
14 he has personal knowledge of.

15 THE COURT: Yeah. I don't want to give a  
16 narrative. If you've got a specific question, Mr. Burks,  
17 ask that. I understand we're treading lightly. But you  
18 can't just ask him to give a narrative.

19 BY MR. BURKS:

20 Q Why were you not successful in March through July in  
21 getting the financing approved and paid to NBK?

22 MR. FITZMAURICE: Objection, Your Honor, calls for  
23 speculation, also mischaracterizes the evidence, lacks  
24 foundation that there was in fact the financing, that there  
25 was any effort to make a payment to the bank. None of that

1 is in evidence.

2 THE COURT: I'll sustain the objection.

3 BY MR. BURKS:

4 Q What was the name of the bank that you mentioned a  
5 moment ago?

6 A Security State Bank. That was one of a number of  
7 people that we had talked to.

8 Q All right. Whatever happened, because I may never get  
9 it in, whatever happened between March through July, do you  
10 believe, in your opinion as a lawyer working the case, that  
11 that is what has resulted in the dispute that is now before  
12 us in the adversary proceeding regarding the breach or non-  
13 breach of the settlement agreement?

14 MR. FITZMAURICE: So objection, Your Honor. Mr.  
15 Wetwiska's opinion on this matter is not relevant. It's  
16 Your Honor's determination. Also, the question specifically  
17 calls for the lawyer to testify about his legal work  
18 product, his legal analysis and attorney-client  
19 communications.

20 THE COURT: I'll sustain the objection.

21 MR. BURKS: Reese? Reese? Pull the complaint up,  
22 please.

23 MR. BAKER: The complaint?

24 MR. BURKS: The adversary complaint regarding  
25 (indiscernible).

1           May I have a moment, Your Honor, while it's  
2   getting pulled?

3           THE COURT:   Sure.

4   BY MR. BURKS:

5   Q     All right.  Did you see the first page of the complaint  
6   on the screen, sir?

7   A     I do, yes.

8   Q     And is this the same complaint you said that you had  
9   personal knowledge of?

10           MR. FITZMAURICE:  Objection, Your Honor.  This is  
11   a complaint filed in November of 2023.

12           THE WITNESS:  This isn't what I was shown earlier.

13           MR. BURKS:  Is that a different one  
14   (indiscernible).  Just a moment to confirm.

15           THE WITNESS:  Can you just go to the signature  
16   page?

17           THE COURT:  It's the wrong complaint.  It's not  
18   the one they want to ask you about.  It's the one that got  
19   removed to my court.

20           MR. BURKS:  Okay.  What number is this, Steve?

21           MR. SATHER:  Is it Exhibit 62 or docket?  I don't  
22   think it's Exhibit 62.

23           MR. BAKER:  All right.  What do you see after  
24   that?  You want (indiscernible) Number 10?

25           MR. BURKS:  I want the one based on the breach

1 (indiscernible) --

2 THE COURT: I think this is what you're looking  
3 for. Bear with me one second while I drag it over to where  
4 it needs to go. I think that's what you're making reference  
5 to.

6 MR. BURKS: Thank you, Judge.

7 THE COURT: Just tell me where you want to go.

8 MR. BURKS: I want to see these signature page for  
9 the witness to see.

10 THE COURT: We have the prayer. Where do you want  
11 to go?

12 MR. BURKS: I see the prayer.

13 THE COURT: It starts there and then it goes to  
14 (indiscernible).

15 BY MR. BURKS:

16 Q Sir, are you familiar with this lawsuit?

17 A I've seen it today, yes.

18 MR. BURKS: Despite my best efforts, I'm not going  
19 to be able to try this lawsuit today, Judge, nor do I have  
20 to, to support my motion. I have no further questions.

21 THE COURT: All right. Thank you. Then I'll go  
22 to Mr. Choudhri.

23 MR. TROOP: Your Honor, can I be excused for just  
24 a moment?

25 THE COURT: Sure. As soon as we're done with this



1 witness, we're going to take a break. I'm just trying to  
2 get him of here.

3 MR. TROOP: I just (indiscernible) --

4 THE COURT: That's fine. Go ahead. Feel free.

5 MR. CHOUDHURI: Thank you.

6 REDIRECT EXAMINATION OF JIM WETWISKA

7 BY MR. CHOUDHURI:

8 Q Mr. Wetwiska, Mr. Conrad put up some transcripts from a  
9 hearing from April 2023, right?

10 A Correct.

11 Q Do you remember there was also a hearing on June the  
12 12, 2023?

13 MR. CHOUDHURI: I can pull up the transcript if  
14 the court will permit me, Your Honor.

15 THE WITNESS: So there were a number of hearings  
16 we had and then maybe even a status conference. We did have  
17 some in June. I thought it was June the 5th  
18 (indiscernible).

19 MR. FITZMAURICE: Your Honor, for the record, what  
20 is the -- what exhibit is this in reference to?

21 THE COURT: I'm not sure what the exhibit. He  
22 hasn't told me. What's the ECF filing number? 90-3?

23 MR. CHOUDHURI: Yes, Your Honor.

24 THE COURT: I think that's either -- that is --  
25 yeah, 90-3 is the ECF number.

1           MR. CHOUDHURI: I'd like to enter this transcript  
2 from the state court, Your Honor. I move to admit this.

3           THE COURT: 90-3. Does anybody have any  
4 objections to the entry of 90-3?

5           Mr. Burks?

6           MR. BURKS: No objection, Your Honor.

7           THE COURT: Mr. Fitzmaurice, do you have time to  
8 look at it?

9           MR. FITZMAURICE: No. Thank you, Your Honor. No,  
10 no objection.

11          THE COURT: All right. Then it's admitted.

12          (Trial Exhibit 90-3 entered into evidence)

13 BY MR. CHOUDHURI:

14 Q       What is the date of this hearing, Mr. Wetwiska?

15 A       June 12th.

16 Q       And this is after the transcript that I think Mr.  
17 Conrad had put up earlier, correct? That was from April.

18 A       Almost two months later.

19 Q       Mr. Conrad took a position and represented to the court  
20 that the settlement agreement does not exist. Do you recall  
21 that?

22          MR. FITZMAURICE: Objection, Your Honor, lacks  
23 foundation.

24          THE COURT: I'll sustain the objection.

25 BY MR. CHOUDHURI:

1 Q Did the court foreclose the bank's breach of the  
2 settlement agreement at that hearing?

3 A No.

4 MR. FITZMAURICE: Objection, Your Honor, vague as  
5 to foreclose the bank's --

6 THE COURT: I need to know what you mean by that.  
7 You need to be more specific.

8 MR. CHOUDHURI: Yes, Your Honor.

9 BY MR. CHOUDHURI:

10 Q So let me back up. We had a settlement agreement,  
11 which is the settlement we're talking about in this case,  
12 August 2022.

13 A Correct.

14 Q And a payment date that was spelled out of the  
15 settlement agreement to being about 270 day, correct?

16 A March. It was March 2023.

17 Q Correct, and the issues that the debtor parties went to  
18 court for were the interferences or challenges of getting  
19 the bank paid.

20 MR. FITZMAURICE: Objection, Your Honor, leading  
21 as to interferences, challenges, getting the bank paid.

22 THE COURT: I'll sustain the objection. Thank  
23 you.

24 THE WITNESS: Can you show me 59 of this exhibit,  
25 just the bottom of it? Can you go to the next page? Okay.

1 BY MR. CHOUDHURI:

2 Q Do you recall Mr. Conrad representing to the court  
3 numerous times at this hearing that the settlement agreement  
4 did not exist?

5 MR. FITZMAURICE: Objection, Your Honor.

6 THE WITNESS: Yes. Sorry.

7 THE COURT: Go ahead, make your objection.

8 MR. CHOUDHURI: What's the objection?

9 MR. FITZMAURICE: The document speaks for itself.  
10 Also mischaracterizes the nature of the document, the legal  
11 argument that was made at a hearing in open court.

12 THE COURT: I'll sustain the objection. Thank  
13 you.

14 BY MR. CHOUDHURI:

15 Q I'd like to show you a document, Mr. Wetwiska. So just  
16 to get the timeline right, at this hearing that you were  
17 president on June the 12th, Mr. Conrad takes the position  
18 that the settlement agreement doesn't -- or maybe we could  
19 go to the transcript, or the transcript is submitted in the  
20 record. But the dispute was, did the settlement agreement  
21 exist or not? Your position to the court was it did. Mr.  
22 Conrad's position was it denied. Do you recall that?

23 MR. FITZMAURICE: Objection, Your Honor, lacks  
24 foundation.

25 THE COURT: I'll sustain the objection. And I'm

1 happy to read the transcript. And we'll read it, Mr.  
2 Choudhri.

3 MR. CHOUDHURI: Thank you.

4 THE COURT: Thank you.

5 BY MR. CHOUDHURI:

6 Q Do you recall that Mr. Russell Ingram from CBRE came to  
7 the hearing?

8 MR. FITZMAURICE: Objection, Your Honor,  
9 relevance.

10 THE COURT: I'll sustain the objection. I don't  
11 understand what the relevance is.

12 MR. CHOUDHURI: There was a buyer with a contract,  
13 irrevocable contract, that was wanting to close as long as  
14 the bank would honor the agreement.

15 THE COURT: If there is, I'm happy to hear that  
16 testimony and see that document. Okay. Thank you.

17 MR. CHOUDHURI: Should I pull up that contract?

18 THE COURT: I don't know if you get it in through  
19 this witness, unfortunately. But you can do whatever you  
20 want to, Mr. Choudhri. You represent yourself.

21 BY MR. CHOUDHURI:

22 Q Okay. Mr. Wetwiska, is this an email you received from  
23 Mr. Conrad on June 29 at 5:42 p.m.?

24 A It is, sir. Yes.

25 Q And earlier we had talked about there was a lot of oral

1     communications, verbal communications. But then you wanted  
2     to start putting things in writing. Do you recall that?

3     A     I think Mr. Conrad wanted things in writing. And I  
4     think I wanted things in writing. It had become contentious  
5     over the -- between May and the end of June.

6     Q     And in this email here, this was the first time ever  
7     that you received a draft set of loan sale documents with an  
8     assignment of the tax liens and a purchase sale agreement  
9     and with a caveat that these are not final. These are not  
10    the final documents.

11           MR. FITZMAURICE: So Your Honor, objection as  
12    leading and lacks foundation. We will stipulate to the  
13    admissibility of the email, if that's where Mr. Choudhri is  
14    trying to do. But I think he's --

15           THE COURT: Okay. I'll take the stipulation.  
16    I'll admit Exhibit 90-8. I'll sustain the objection  
17    otherwise.

18           (Trial Exhibit 90-8 entered into evidence)

19    BY MR. CHOUDHURI:

20    Q     So Mr. Wetwiska, the first time the bank ever provided  
21    anything close -- let me back up.

22           MR. CHOUDHURI: Let me move around that question  
23    and ask it a better way, Your Honor.

24    BY MR. CHOUDHURI:

25    Q     I think we've established that you asked for a loan

1 sale agreement from Mr. Conrad around March, before the  
2 expiration of the payment date, correct?

3 MR. FITZMAURICE: Objection, Your Honor, assumes  
4 facts not in evidence.

5 THE COURT: I'll sustain the objection. That's  
6 not my recollection of the testimony.

7 BY MR. CHOUDHURI:

8 Q Did you ask for the loan sale agreement before the  
9 expiration of the payment date in the settlement agreement?

10 A Before March 20, yes.

11 Q You did, right?

12 A Yes.

13 Q And how did you ask?

14 A I asked Mr. Conrad. I told him we're getting close to  
15 March 20. There was this issue with Mr. Caldwell. We're  
16 getting down to the wire. I need to see the documents and  
17 we're trying to see if we can get something done by the  
18 20th.

19 MR. FITZMAURICE: So just, Your Honor, objection  
20 as to hearsay with respect to Mr. Caldwell, but --

21 THE COURT: I'll sustain the objection as to  
22 hearsay as to that part of the answer.

23 BY MR. CHOUDHURI:

24 Q I just want the record to be clear. So the request for  
25 loan sale agreement was made before the expiration that was

1     stated in the settlement agreement, correct?

2     A     Before March 20, yes.

3     Q     Okay, and so the first time that you ever got a loan  
4     sale agreement was this email we're looking at today that's  
5     been stipulated, which is document 90-8, right?

6     A     I don't remember seeing them before this date.

7     Q     This is basically one business day before the  
8     foreclosure, the scheduled foreclosure sale, correct?

9             MR. FITZMAURICE:  Objection, Your Honor.

10            THE WITNESS:  Actually two.

11            MR. FITZMAURICE:  Your Honor can take judicial  
12     notice of the calendar, but we've got a Friday and a Monday  
13     and the foreclosure is on a Wednesday.

14            THE COURT:  Yeah.  I'll sustain the objection  
15     (indiscernible) --

16     BY MR. CHOUDHURI:

17     Q     Was Monday, July the 3rd, a holiday?

18            THE COURT:  I think we answered that before, Mr.  
19     Choudhri.  Yes.

20     BY MR. CHOUDHURI:

21     Q     So this is an email that you received at 5:42 p.m.

22            MR. TROOP:  Objection.

23            MR. FITZMAURICE:  Objection.  I mean, Your Honor,  
24     again, Your Honor can take judicial notice that Monday, July  
25     3rd is not a holiday.



1 THE COURT: Yes. That's not a holiday.

2 BY MR. CHOUDHURI:

3 Q Are you aware if the banks were closed on July the 3rd?

4 MR. FITZMAURICE: Objection, Your Honor.

5 THE COURT: I don't have personal knowledge of  
6 that. I'll sustain the objection.

7 THE WITNESS: I don't know.

8 BY MR. CHOUDHURI:

9 Q And when you received this email, this was not the  
10 final approved loan sale agreement by the Bank of Kuwait,  
11 true or false?

12 MR. FITZMAURICE: Objection. Objection, Your  
13 Honor, leading.

14 THE COURT: I'll sustain the objection.

15 BY MR. CHOUDHURI:

16 Q Could you read me the last sentence on the email?

17 A These drafts remain subject to NBK's review and  
18 comment.

19 Q Do you know who Romston is?

20 A (indiscernible) yeah, I do.

21 Q Is this another lender that was willing to do the loan  
22 to fund the loan purchase?

23 MR. FITZMAURICE: Objection, Your Honor, leading  
24 as to another, also relevance. There's no evidence, and  
25 lacks foundation. The issue is whether, again, the bank

1     should be allowed to credit bid tomorrow.  There's no  
2     evidence that National Bank of Kuwait had any awareness,  
3     knowledge of who these folks are, or that there was any  
4     communication with the bank so that it would actually be  
5     relevant to the bank's conduct necessary for the credit  
6     bidding motion.

7                 THE COURT:  I'll sustain the objection.  Go ahead,  
8     sir.

9                 MR. CHOUDHURI:  Your Honor, what I'm trying to  
10    establish is --

11                THE COURT:  I've ruled on the objection.  You may  
12    ask another question.  Please go ahead.

13    BY MR. CHOUDHURI:

14    Q     Mr. Wetwiska, how is it possible or commercially  
15    feasible for a transaction to take place without the  
16    operative document --

17                MR. FITZMAURICE:  Objection, Your Honor.

18                MR. CHOUDHURI:  Let me back up.  That's a bad  
19    question.

20    BY MR. CHOUDHURI:

21    Q     Mr. Wetwiska, you've been involved in a lot of  
22    closings, right?

23    A     I guess.

24                MR. FITZMAURICE:  Objection, Your Honor -- well,  
25    go ahead.  I'm sorry.  I'll withdraw.

1           THE COURT: Go ahead. Go ahead. Ask the next  
2 question.

3 BY MR. CHOUDHURI:

4 Q     You're a senior partner at Akin Gump, correct? You've  
5 been at Akin Gump how long?

6 A     Twenty years.

7 Q     And you've been involved in a lot of transactions?

8 A     Both as a lawyer, as an individual, as an investor,  
9 yes.

10 Q    In fact, you personally have your personal investments  
11 and lots of transactions like (indiscernible) --

12           MR. FITZMAURICE: Objection, Your Honor,  
13 relevance.

14           THE COURT: I'll sustain the objection as to  
15 relevance.

16 BY MR. CHOUDHURI:

17 Q    You have personal experience in business, in investing  
18 and transacting?

19           MR. FITZMAURICE: Objection, Your Honor,  
20 relevance. Mr. Wetwiska is not here as an expert on real  
21 estate closing.

22           THE COURT: I'll sustain the objection as to  
23 relevance. And again, Mr. Choudhri, I'm going to warn you.  
24 You need to ask questions that the witness can actually  
25 answer.

1 BY MR. CHOUDHURI:

2 Q Mr. Wetwiska, is this an email that you received?

3 MR. FITZMAURICE: So objection, Your Honor, lacks  
4 foundation. Mr. Wetwiska isn't anywhere on this email.

5 MR. CHOUDHURI: Yes, he is.

6 THE COURT: I see the top line. Go ahead.

7 MR. FITZMAURICE: I thought he meant this one down  
8 here..

9 THE WITNESS: I received it a couple of times.

10 THE COURT: You weren't a party to the original  
11 email? It was simply forwarded to you?

12 THE WITNESS: The original email was either  
13 forwarded to me or shown to me.

14 THE COURT: Okay. That's fine.

15 THE WITNESS: And then for some reason, and I  
16 don't know why, this looks like it was sent to me in April  
17 of this year, but I don't know why he would have sent it to  
18 me.

19 THE COURT: Okay. Go ahead.

20 BY MR. CHOUDHURI:

21 Q Mr. Wetwiska, would you just read into the record what  
22 the email from Mr. (indiscernible) at Romston states? Or  
23 would you read in the record what is on the subject of the  
24 email?

25 A The subject?

1 Q Yes, sir.

2 A Re Galleria 2425 v. National Bank of Kuwait

3 (indiscernible).

4 Q And what does the email say, starting from how.

5 A How do they expect you to close on July 3 if they  
6 haven't produced a sale agreement? We'll look out for the  
7 documentation. Do you want me to continue?

8 MR. FITZMAURICE: Your Honor, I don't -- so  
9 objection, Your Honor. The email, the underlying email, not  
10 the forwarded to Mr. Wetwiska --

11 THE COURT: It's not in evidence.

12 MR. FITZMAURICE: It's not in evidence.

13 THE COURT: I'll sustain the objection.

14 MR. CHOUDHURI: I'd like to move this email, Your  
15 Honor.

16 THE COURT: It's not admissible through this  
17 witness.

18 BY MR. CHOUDHURI:

19 Q Is there any possibility of buying the loan under the  
20 confidential settlement without a loan sale agreement, Mr.  
21 Wetwiska, if you know?

22 MR. FITZMAURICE: Objection, Your Honor. That  
23 agreement speaks for itself and also calls for speculation.

24 THE COURT: Calls for a legal conclusion. I'll  
25 sustain the objection.

1 BY MR. FITZMAURICE:

2 Q So Mr. Wetwiska, you're aware that at least two lending  
3 institutions that require a loan sale agreement before they  
4 move forward to fund the transaction, correct?

5 MR. FITZMAURICE: Objection, Your Honor, lacks  
6 foundation and also relevance to the issue of whether or not  
7 the bank can credit bid tomorrow.

8 THE COURT: I'll sustain the objection as to lack  
9 of foundation. Go ahead, ask the next question.

10 BY MR. CHOUDHURI:

11 Q If the bank is acting in bad faith and preventing  
12 performance, do you believe they should be able to credit  
13 bid?

14 MR. FITZMAURICE: So objection, Your Honor,  
15 relevance, calls for a legal conclusion.

16 THE COURT: I'll sustain it on both of those  
17 grounds. Thank you.

18 BY MR. CHOUDHURI:

19 Q Mr. Wetwiska, are you aware of the bank telling the  
20 buyers that were calling the trustee that there will be a  
21 foreclosure in the future and Judge Weems admonished them  
22 for doing so? Do you recall it? That's a bad question.  
23 I'm sorry. Do you recall going to a hearing in front of  
24 Judge Weems where Judge Weems admonished NBK for after they  
25 passed the sale, for telling the people calling the bank

1     why?

2                   MR. FITZMAURICE:   Your Honor, lacks foundation.

3     If there is such a hearing, then there will be a transcript  
4     and we can look at that.

5                   THE COURT:   I'll sustain the objection.

6                   Mr. Choudhri, you basically have gotten to the  
7     point where you're really trying my patience.  You have two  
8     more questions.  And if they're both overruled on  
9     objections, you're done.

10    BY MR. CHOUDHURI:

11    Q     Did you come to find out that Paul Caldwell was in  
12    communication with Pillsbury?

13                   MR. FITZMAURICE:   Objection, Your Honor, hearsay  
14    as to Mr. Caldwell.

15                   THE COURT:   I'll sustain the objection as to  
16    hearsay.

17                   Mr. Choudhri, you on your last question.

18    BY MR. CHOUDHURI:

19    Q     Was there an email forwarded to you?  I believe it's  
20    one of the exhibits, if we can pull it up.  Can you tell us  
21    the situation or the circumstance in your conversation with  
22    Mr. Conrad relating to Paul Caldwell?

23                   MR. FITZMAURICE:   Your Honor, I don't --

24                   THE COURT:   I don't understand the question  
25    either.

1 MR. FITZMAURICE: Yeah.

2 THE COURT: Rephrase it, please.

3 BY MR. CHOUDHURI:

4 Q Did Mr. Conrad contact you and said he has received a  
5 request for a payoff from Paul Caldwell?

6 MR. FITZMAURICE: Objection, Your Honor, again,  
7 best evidence rule. If there is correspondence related to  
8 this, it would be in an email.

9 THE COURT: I'll sustain the objection.

10 One more question, Mr. Choudhri.

11 MR. CHOUDHURI: I'm done, Your Honor. I do not  
12 have any (indiscernible) --

13 THE COURT: Okay. Thank you. All right.

14 Let's go to Mr. Fitzmaurice. Do you have  
15 questions for this witness?

16 MR. FITZMAURICE: I think Mr. Conrad does, Your  
17 Honor.

18 MR. CONRAD: Just real quick cleanup on two  
19 issues.

20 THE COURT: Sure. Go ahead.

21 MR. FITZMAURICE: And again, Your Honor, I'll  
22 present from here.

23 THE COURT: That's fine.

24 MR. FITZMAURICE: Thank you.

25 MR. CONRAD: Just quickly, there was an exhibit



1     that we had listed on our exhibit list that I forgot to be  
2     admitted into the record. This is ECF 498-01. This is the  
3     transcript from the April 12, 2023 hearing that we looked at  
4     earlier. I'd move to admit it.

5             THE COURT: Are there any objections to ECF 498-01  
6     being admitted?

7             MR. BURKS: No, Your Honor.

8             THE COURT: Mr. Choudhri?

9             MR. CHOUDHURI: Which is the exhibit on this?  
10    Which one? This one?

11            THE COURT: April 12th hearing date transcript.

12            MR. CHOUDHURI: No. No.

13            THE COURT: It's admitted. Thank you.

14            (Trial Exhibit 498-01 entered into evidence)

15            MR. CONRAD: Thank you, Your Honor. I'm going to  
16    turn to the settlement quickly, and this is ECF 508-7. And  
17    looking specifically, if you'll zoom out a little bit just  
18    to get an idea what page this is. This is Page 5 of the  
19    settlement agreement. Scroll up if you will. And this is  
20    subsection settlement payment.

21                    RE CROSS-EXAMINATION OF JIM WETWISKA

22    BY MR. CONRAD:

23    Q     Do you see there D?

24    A     Yes.

25    Q     I think some of your testimony earlier today, Mr.

1     Wetwiska, was is the bank had an obligation to produce or  
2     provide closing documents associated with the purchase or  
3     sale. Do you recall that testimony that you gave earlier  
4     or, correct me if that's wrong or not.

5     A     I think what I was saying is that you had to have  
6     documents, those documents to consummate it and the bank  
7     somewhere in here I thought had agreed to work with and  
8     provide information that's required to do that.

9     A     So I want -- but you don't recall off the top of your  
10    head, do you?

11   A     I did not review this before today.

12   Q     Fair enough. And so looking at here, this is under --  
13   I'm sorry. I said D. I meant H. This is under the  
14   purchase option section. If you look at the last sentence  
15   of that paragraph of that section where it says, upon  
16   written request of a purchase option party, do you see that?

17   A     Yes.

18   Q     It says, NBK shall provide such purchase option party  
19   with a payoff statement for the satisfaction or purchase of  
20   its loan and loan documents. Do you see that?

21   A     Right.

22   Q     We've looked at your exhibit, your letter from June  
23   28th where you're requesting that the bank provide  
24   documents. Do you remember looking at that letter that you  
25   sent?

1 A Right.

2 Q We looked at an email correspondence where those  
3 documents were sent to you --

4 A Correct.

5 Q -- within 24 hours of your letter, if you look at the  
6 emails.

7 A Right.

8 MR. CONRAD: Nothing further, Your Honor.

9 THE COURT: Thank you.

10 Mr. Burks?

11 MR. BURKS: Two questions.

12 REDIRECT EXAMINATION OF JIM WETWISKA

13 BY MR. BURKS:

14 Q Let's just continue on the question about the --

15 A You guys should have called me first.

16 Q The document -- so my question is, but the documents  
17 stated that the loan documents provided were subject to  
18 approval, were not in the final form, correct?

19 A I don't -- it speaks -- it says what it says. I think  
20 they reserved the right to further review and consent, or  
21 something along those lines.

22 Q When did you receive an email, mail or otherwise of  
23 final loan closing documents? Did you ever?

24 A No.

25 MR. BURKS: Nothing further.

1 THE COURT: Thank you.

2 Mr. Choudhri, do you have any questions to this  
3 witness, Mr. Choudhri? You're limited to redirect what's  
4 just been asked in the two previous parties.

5 MR. CHOUDHURI: No, Your Honor.

6 THE COURT: All right. Mr. Conrad?

7 MR. CONRAD: Nothing further Your Honor.

8 THE COURT: I'm going to let you go, sir. Thank  
9 you for coming.

10 MR. WETWISKA: Your Honor, nice to meet you.

11 THE COURT: Nice to meet you, sir.

12 MR. WETWISKA: Thank you.

13 THE COURT: Good luck to you.

14 MR. WETWISKA: Thank you.

15 THE COURT: All right. It's time now to take a  
16 break. It's overdue. How long do the parties want to break  
17 for? You haven't eaten anything. You haven't had a drink.  
18 What do you want to do? We're going to stay here until we  
19 get finished with this motion. So how long? It's just your  
20 time. So you can decide what you want to do.

21 Mr. Burks, how long do you want?

22 MR. BURKS: I want to get a Starbucks iced tea and  
23 a sandwich. If that takes about an hour and a quarter,  
24 that's how much time I'd like. I don't know where Starbucks  
25 is. Is it in the tunnel?

1 THE COURT: There is one directly across the  
2 street. It should take you about 45 minutes to do both  
3 those things. Okay. You okay with a 45-minute break?

4 MR. FITZMAURICE: Your Honor, we'd like it to be  
5 less. As much as we love the court's company, we'd rather  
6 not be here until 2:00 a.m. if we don't have to be.

7 THE COURT: That's my preference as well. But I  
8 need to be in a position to give you a written ruling on  
9 this motion, and so I can tell you what's going to happen.  
10 You guys are going to finish and then I'm going to send you  
11 home because I need to now read everything you've put into  
12 evidence and give you a written ruling before 1:00 p.m.  
13 tomorrow. And you're going to be back here on the 3rd.  
14 Okay?

15 So how long do you want, Mr. Burks?

16 MR. BURKS: Forty-five minutes. I'll test -- I'll  
17 test (indiscernible) --

18 THE COURT: Okay. I'll give you a few minutes.  
19 I'm going to speed things along. It is 2:20 according to my  
20 Apple watch, which always has the right time. We will  
21 resume at 3:00 p.m. Thank you.

22 MR. FITZMAURICE: Thank you, Your Honor.

23 CLERK: All rise.

24 (Recess)

25 CLERK: All rise.

1 THE COURT: Please be seated.

2 Mr. Murray, did you have something to say?

3 MR. MURRAY: Yeah, a short housekeeping matter. I  
4 didn't want to interrupt the evidence. You had mentioned --  
5 I don't know if I could start now or --

6 THE COURT: Go ahead.

7 MR. MURRAY: The court talked about scheduling  
8 when you might issue an order in advance of 1:00 tomorrow so  
9 that that would not delay the auction. It's still my  
10 intention to have an auction at 1:00. I might however delay  
11 it, the reason for that being we got a conforming bid where  
12 the escrow money wasn't provided, but they said it was going  
13 to be. I wanted to wait a little bit of time to see if it  
14 comes in today and, if it does, they'd have more bidders at  
15 the auction. And I think I have discretion under the rules  
16 to extend the auction. But I didn't want --

17 THE COURT: I just want to rule on the credit bid  
18 motion before 1:00 p.m. tomorrow so you know what's going on  
19 there.

20 MR. MURRAY: Okay, I appreciate it. I just wanted  
21 the court to know that.

22 THE COURT: And when everyone gets here, I will  
23 tell you that on the 3rd, basically the courthouse will be  
24 closed. You will have to enter through the entrance is to  
25 the far left where the call box is. They know you're

1 coming. You'll have to hit the button. Call, they'll let  
2 you in to come up. Okay.

3 MR. MURRAY: Thank you.

4 MR. BURKS: Thank you, Your Honor.

5 MR. FITZMAURICE: On the 19th.

6 MR. TROOP: Judge, you said the 3rd. Did you mean  
7 the 19th?

8 THE COURT: The 19th. I'm sorry. yeah. I  
9 apologize. I don't know why I'm saying the 3rd. I think  
10 it's because we filed on July 3rd (indiscernible) --

11 MR. FITZMAURICE: We filed it as of July 3rd this  
12 morning. Yeah.

13 THE COURT: Yeah.

14 Mr. Burks, do you have your next witness?

15 MR. BURKS: He's not in the courtroom. I'll call  
16 him.

17 THE COURT: You can call Mr. Murray.

18 MR. BURKS: Mr. who? Mr. Murray. Yes.

19 THE COURT: Okay.

20 MR. BURKS: I thought he was there.

21 THE COURT: You were looking at him. I was  
22 assuming that's who you were going to call.

23 Mr. Murray, come up and I'll swear you in. Please  
24 raise your right hand. Do you swear or affirm to tell the  
25 truth, the whole truth and nothing but the truth, so help

1     you God?

2                   MR. MURRAY:   I do.

3                   THE COURT:   All right.   Please be seated.

4                   MR. MURRAY:   May I take a water with me?

5                   THE COURT:   You may.

6                   DIRECT EXAMINATION OF CHRISTOPHER MURRAY

7     BY MR. BURKS:

8     Q     Please state your name for the record.

9     A     Christopher Murray.

10    Q     And in connection with this case, do you serve in any  
11    capacity?

12    A     I'm the Chapter 11 trustee.

13    Q     Are you also an attorney?

14    A     Yes.

15    Q     Boom.   When did you assume the position of Chapter 11  
16    trustee in this case?

17    A     Early February.

18    Q     Of 2024?

19    A     Yes.

20    Q     All right, and have you seen the motion for sale and  
21    have you seen the plan?   I'll do them one at a time.   Who  
22    filed the motion which resulted in (indiscernible) auction  
23    (indiscernible)?

24    A     I believe I filed a motion to authorize bidding  
25    procedures and that's what was approved.



1 Q All right, and in the bidding procedures, was there  
2 provision for credit bidding by National Bank of Kuwait?

3 A Yes.

4 Q And may I refer to National Bank of Kuwait as NBK or  
5 National Bank of Kuwait?

6 A That's fine with me.

7 Q Thank you, and was that something that you originally  
8 drafted or was that something that NBK asked you to put in  
9 later?

10 A It said we drafted it together. I think the first  
11 draft came from that.

12 Q So the first draft of the bidding procedures came from  
13 the bank's attorney?

14 A I believe that's right, yes.

15 Q All right, and when you saw the credit bid provision,  
16 did you have any comments on it?

17 A Nothing specific comes to mind.

18 Q All right. On the bidding procedures, did you -- were  
19 you able to quickly accept those procedures, or did you have  
20 a draft of your own (indiscernible) your attorneys?

21 A I believe we provided rounds of comments, but starting  
22 with NBK's draft. I don't think we had our own draft.

23 Q Okay, and starting with NBK's draft, there wasn't a  
24 prior draft before theirs, was there?

25 A Not that I recall.

1 Q Okay, and who signed off on the bidding procedure? Did  
2 you sign off on it?

3 A I did, yes. Well, ultimately, Judge Norman signed off  
4 on it, but --

5 Q Sure. But what was proposed to the court, you signed  
6 off on it?

7 A Yes.

8 Q And at what time of the case was this? Was this -- in  
9 what period were you drafting this motion? January,  
10 February, March?

11 A Well, I was appointed in February. It wasn't  
12 immediately. So it would have been March or April.

13 Q Okay.

14 A And the document itself has a timestamp.

15 Q Sure. Sure. Well, I'm actually going into your  
16 thought processes as to what's happening here. Did you ever  
17 question why the bank wanted to credit bid?

18 A No.

19 Q Did you ever analyze or ask the bank if there was any  
20 procedure they'd agreed to other than credit bid?

21 A Yes.

22 Q And what did you ask them?

23 A I asked them if they would be willing to put a cap on  
24 the amount of their credit bid.

25 Q And what cap did you ask them?

1     A     I asked them conceptually, and they said no, there  
2     wasn't a number.

3     Q     Okay. Now, this was done before all the litigation  
4     that is now on file was on file; is that correct?

5     A     I don't know what you're referring to.

6     Q     Fair enough. Was there a time where Ali Choudhri or  
7     anybody else post-bankruptcy brought you leases, potential  
8     leases for the building?

9     A     There were documents presented to me that were called  
10    leases.

11    Q     Okay, and what did you do with those?

12    A     I reviewed them with my counsel.

13    Q     All right. Did you bring those to the bank?

14    A     I don't know if -- I don't know if lawyers shared those  
15    leases. I did not ask the bank to approve any of them.

16    Q     Did you ask the bank's lawyers to review them?

17    A     Personally? I don't recall. I don't know if I did  
18    that.

19    Q     Do you know if your lawyers spoke to the bank's  
20    lawyers?

21    A     I know they spoke to them all the time. I don't know  
22    if they presented leases.

23    Q     All right, and so you made a decision not to present  
24    these documents that you said represented leases; is that  
25    correct?

1 A Yes.

2 Q On the leases, are you aware whether or not a tenant  
3 requires anything from the National Bank of Kuwait in order  
4 execute a lease?

5 A Just leases generally, or are you referring to one in  
6 particular?

7 Q Leases generally. Do they need --

8 A I don't know.

9 Q -- do they need anything from the lender in order to  
10 sign a business lease in a corporate (indiscernible) --

11 A Yeah, lots of things.

12 Q Yeah. They need it from the lender, don't they?

13 A Yeah.

14 Q Okay. So why did you not present any of these leases  
15 to the lender's attorneys or to the lender?

16 A Well, before I get the bank to sign off on the lease, I  
17 have to think it's in the estate's best interest, and none  
18 of them were.

19 Q All right, and generally -- we'll go specifically or  
20 someone else will. Generally, why did you determine that  
21 executing those leases was not an the bank's best -- excuse  
22 me, the estate's best interest, or let me rephrase the  
23 question. Why did you determine that it wasn't even in the  
24 estate's best interest to forward these documents, whatever  
25 they are, to Bank of Kuwait?

1 A I don't think I made that determination. But what you  
2 asked -- I want to answer your question. What are you  
3 asking, sir?

4 Q Sure. You reviewed documents that you say purported to  
5 be leases, correct?

6 A Yes.

7 Q You stated you did not forward them to the National  
8 Bank of Kuwait, either to the bank or to their attorneys.

9 A I said I do not remember personally sending it to the  
10 bank. I know my attorneys were talking to the bank's  
11 attorneys all the time. Lots of documents were exchanged.  
12 I don't know if they were exchanged in the process.

13 Q Did you ask your attorneys to send these leases ahead  
14 to the bank's attorneys?

15 A No, I don't remember doing that.

16 Q All right. So why did you not ask your attorneys to  
17 forward the leases ahead to the bank's attorneys or to the  
18 bank?

19 A I wasn't -- I had not determined that they were worth  
20 the estate pursuing. So why would I waste time asking the  
21 bank's consent to do something I didn't want to do?

22 Q And in deciding not to do that, how did you determine  
23 that? Did you speak to any of the potential tenants or just  
24 to Mr. Choudhri?

25 A I spoke to one of the potential tenants.

1 Q Oh, good. And who did you speak with -- excuse me.

2 I'll state it again. Good. With whom did you speak?

3 A I spoke to Faisal Shah.

4 Q Faisal Shah. And that was for a potential lease of  
5 what?

6 A I think the company was called Vaxanix. He said that  
7 he represented that company in some capacity and we spoke  
8 briefly about a potential proposal of a lease. But I never  
9 heard from him again on that.

10 Q All right. Do you recall any of the others? I think  
11 there were -- I'm not going to put words in your mouth. Do  
12 you recall any of the others that were presented to you by  
13 Ali or someone on behalf of Ali with post-petition leases?

14 A I think Ali presented one other potential lease from a  
15 shipping company. But I never heard from that company or  
16 any of its representatives.

17 Q Did you contact them?

18 A No.

19 Q Okay. So were there any other lease or lease options  
20 or occupancy documents that Ali or someone on behalf of Ali  
21 sent to you?

22 A Not that I recall. I mean, the ones I'm talking about  
23 are two documents that said lease on the top and looked kind  
24 of like leases. At various times, Ali would say and propose  
25 different things about -- I'm sorry, I mean, Mr. Choudhri,

1 I'm not trying to be disrespectful -- that I do not think  
2 rise to the level of a lease, but maybe indicated someone  
3 might be interested in leasing space.

4 Q In addition to those two?

5 A Yeah. I can't think of anyone in particular.

6 Q All right. But he never gave you -- did he ever give  
7 you names or contacts?

8 A I think at different times he gave some names, yes.

9 Q All right, and did you contact those people?

10 A No.

11 Q What approach did you take from the time you took on  
12 the Chapter 11 trusteeship, what efforts did you take to  
13 market leases on this property?

14 A I interviewed two different real estate companies with  
15 experience in that field to explore the possibility of  
16 marketing the building.

17 Q All right, and what was the result of that? Did you  
18 say you had one conversation with each realtor or --

19 A It was multiple conversations. I didn't keep track of  
20 the number with which ones.

21 Q And what came of those conversations in general?

22 A I decided which one to propose to hire to sell the  
23 building.

24 Q In the interim, did you -- of selling the building, did  
25 you discuss with any realtors actively pursuing leases on

1 the building?

2 A Yes.

3 Q And with whom did you contact?

4 A The two were Hilco, who I ultimately hired, and JLL,  
5 which the bank had originally proposed as the broker.

6 Q Did you get any of the leases post-petition into the  
7 building?

8 A No.

9 Q Why not?

10 A I didn't seek any new ones.

11 Q Oh? Why not?

12 A Well, since you asked, both of the realtors I spoke to  
13 said it would be nonsensical to try to sign up new leases  
14 for several reasons, the first of which was the building had  
15 a reputation, is the term they used. They said no serious  
16 creditworthy tenant would sign a significant lease with the  
17 building knowing who its management was. That was one  
18 thing.

19 Q All right.

20 A The second thing was they didn't like a particular  
21 tenant in the building, that being the Jetall companies.  
22 That company also had a reputation. And nobody would lease  
23 space in a building where they were a tenant. That's what  
24 two different companies told me.

25 Q All right.



1     A     They also said it was known that the company's owner  
2     was in bankruptcy and that no serious tenant would ever  
3     propose a meaningful, economically valuable long-term lease  
4     with a company whose owner might change at any moment. They  
5     would want to know who the buyer is. They would want to  
6     know the result of the bankruptcy before signing a lease.  
7     Their advice to me was that it was not realistic that a  
8     serious person would propose a lease, and I shouldn't waste  
9     my time looking at proposed leases like that. More reasons,  
10    since you asked.

11    Q     Sure. I did.

12    A     It was explained to me that any time you sign a long-  
13    term commercial lease, there is a broker payment that is due  
14    to whoever brought the lease to you. It was explained to me  
15    by those two companies that you have to pay. The landlord  
16    has to pay cash to the broker at the beginning of the lease.  
17    I don't have any cash. I have very limited cash in this  
18    estate, so I'm not in a position to do that. I asked for  
19    information on those leases as to who the broker was and  
20    what they would get paid. Never got an answer. But I do  
21    know that there were other leases that the debtor had, or  
22    which Jetall companies and other related entities are still  
23    asserting that they're due payment on a broker fee. So I  
24    was concerned that there might be an additional claim  
25    against the estate if I were to sign a new lease that Mr.

1 Choudhri had presented to me. Also, the leases call for  
2 certain expenses to be advanced by the landlords --

3 Q Correct.

4 A -- and those include use of time by security staff,  
5 after hours use of the elevators and HVAC for move in and  
6 (indiscernible), all the kind of things that happen when the  
7 tenant moves in. I didn't want to incur those costs on such  
8 speculative proposed leases. And oh, almost all -- at least  
9 one of the leases that I remember, the other one probably  
10 had it and the brokers told me that any lease in today's  
11 market would have it, a certain period of rent abatement  
12 where there would be no cash paid. One of my them I think  
13 was at least a year. I'm told is multiple years in long-  
14 term leases in the current market. I was not interested in  
15 bringing in a tenant into this estate that is cash poor, in  
16 bankruptcy, with no prospect of revenue coming in for that  
17 period of time. So those are what come to mind right now as  
18 the reasons why I did not pursue new leases.

19 Q So with all that in mind, why wouldn't you have jumped  
20 through hoops to do everything possible to figure out  
21 whether or not these two leases that Ali brought you were  
22 real tenants and what the circumstances of their income and  
23 terms were?

24 A The source of the leases.

25 Q So the fact that Ali brought them to you, you judged

1     meant that they wouldn't be profitable or beneficial to the  
2     estate?

3     A     Well, no, it's all the factors I just mentioned. But  
4     you said why I didn't jump through hoops to contact who  
5     proposed them, that's why.

6     Q     So what were the terms of those leases?

7     A     I don't remember them as I sit here today. I mean, I  
8     remember some.

9     Q     Did you read them?

10    A     Yes.

11    Q     And how many were there?

12    A     There were two that I recall reading.

13    Q     All right, and were there any others where Ali said,  
14    this is somebody, despite the fact of what you were told by  
15    Hilco or somebody else, these are people who want to rent  
16    the space (indiscernible). Didn't he call you with several  
17    names?

18    A     He might have. I don't remember reaching out to anyone  
19    asking if they wanted to lease space, though.

20    Q     And you didn't reach out to these people because why?

21    A     I did not think it would be productive.

22    Q     But you didn't reach out to them?

23    A     Yeah, you've asked me that four times. I haven't.

24    Q     So we'll never know if it would have been productive or  
25    not?

1 A No, I think we do know. I think when someone's  
2 motivated and wants to do a deal, they reach out to me.  
3 That happens in almost all of my cases. People say, hey,  
4 you've got something I want to buy. They call me. It's not  
5 somebody trying to delay the process who presents an offer  
6 on their behalf.

7 Q And that's what you thought Ali was doing?

8 A That was the conclusion I reached throughout this case,  
9 yes.

10 Q Okay. From your perception of Ali, or from your  
11 perception of the potential tenant?

12 A My perception of the tactics being employed by Mr.  
13 Choudhri and his related entities in the case.

14 Q Okay. Fair enough.

15 MR. BURKS: One moment, Your Honor. I may be done  
16 with this witness.

17 BY MR. BURKS:

18 Q Do you have an opinion as to whether or not the winning  
19 cash auction price is affected by a credit bid?

20 A Yes.

21 Q And what is your opinion based on?

22 A Assumptions about human nature and what I would do if I  
23 wanted to bid on an asset.

24 MR. BURKS: No further questions, Judge.

25 THE COURT: All right. Mr. Choudhri, do you have

1 any questions for this witness?

2 MR. CHOUDHURI: Yes, Your Honor.

3 THE COURT: Come on up.

4 DIRECT EXAMINATION OF CHRISTOPHER MURRAY

5 BY MR. CHOUDHURI:

6 Q Good afternoon, Mr. Murray.

7 A Good afternoon.

8 Q Mr. Murray, do you recall the first time we met?

9 A Yes.

10 Q And where was that?

11 A That was at 2425 West Loop South.

12 Q Was that on a Sunday?

13 A I think so, yeah.

14 Q Mr. Murray, would you represent that you've been  
15 truthful and honest to me in this process?

16 A Yes.

17 Q When did you make the decision to not pursue any claims  
18 against the Bank of Kuwait?

19 A I'm not sure I have made that decision. I think I am  
20 pursuing them.

21 Q You are pursuing claims against the Bank of Kuwait?

22 A Yeah. Those are live claims. They have value to me.  
23 They've not been released.

24 Q So the estate still has claims against the Bank of  
25 Kuwait as we sit here today?

1 A As we sit here today, yes. Yes, it does.

2 Q So when Mr. Troop stated that there was a stipulation  
3 in the final cash collateral that any claims that could have  
4 been brought had to be brought and can't be brought anymore  
5 --

6 A I don't think that's what he said. And that's not what  
7 I understood.

8 Q What did you understand?

9 A I understood that it was specific claims about the  
10 amount of the debt and the validity of the lien that  
11 objections to that challenge period came and went.

12 Q So what is the amount of the debt that you contend is  
13 owed to NBK?

14 A I don't contend anything about the amount of debt owed  
15 to NBK.

16 Q At your very first meeting with NBK, they told you that  
17 they wanted to auction the property immediately, right?

18 A I don't know if they said it that clearly. My  
19 impression from the first meeting was that, yes, they wanted  
20 to foreclose essentially and have an auction.

21 Q And can you explain why they didn't cooperate with the  
22 cash collateral for six weeks after you got appointed?

23 MR. FITZMAURICE: Objection, Your Honor. Sorry.  
24 Apologies. Objection, Your Honor, lacks foundation, assumes  
25 facts not in evidence.

1                   THE COURT: All right. I'll sustain the objection  
2 just to foundation.

3 BY MR. CHOUDHURI:

4 Q     Mr. Murray, do you recall having a meeting with me on  
5 March 13, 2024?

6 A     I don't know the specific date. We met a few times at  
7 least.

8 Q     So is there a reason that you did not want to pursue  
9 the lease with Vaxanix?

10 A    Yes.

11 Q    What is that reason?

12 A    Do I need to say them again? Again, several reasons.

13 Q    Was a specific question about Vaxanix asked earlier?

14 A    He asked about leases generally. I answered generally.  
15 But those reasons all apply in Vaxanix's case.

16 Q    So I just want to make sure my question is clear.  
17 There is -- what is the reason you decided not to pursue the  
18 lease with Vaxanix?

19 A    I wasn't sure if it was real. I had been advised that  
20 a serious tenant who was creditworthy and sophisticated  
21 would never present such a lease. There was not immediate  
22 payment of cash into that lease. You didn't tell me whether  
23 you were going to get a fee for presenting the lease to me,  
24 and I asked you as broker. So I was concerned that there  
25 would be a claim by you against the estate if I took the

1 lease. I was also concerned that, failing that, there would  
2 be another broker with their hand out for a fee. I thought  
3 it might be disruptive to a sale process to sign up a new  
4 lessee. Oh, that's one I forgot to mention before. Let's  
5 see. Cash out of pocket costs, disruption of the process,  
6 tenant probably not real. Oh, and that party never reached  
7 out to me directly. I only ever heard of them through you  
8 and then Faisal, who I spoke with about it. But you made  
9 that introduction that day.

10 Q Did he ask you for an SNDA?

11 A He did, yeah. I think he mentioned that the tenant  
12 would need an SNDA. That's my recollection.

13 Q And do you recall what you said?

14 A I think I said the bank would never give him one.

15 Q You said the bank would never give him one?

16 A I'm pretty sure it was my -- yeah, I think it was my  
17 understanding at the time that the bank was not going to  
18 subordinate to a new lessee when they wanted to auction and  
19 foreclose on the building.

20 Q Now you were not at the deposition of Michael Carter --

21 A No.

22 Q -- on June the 5th, right?

23 A No.

24 MR. CHOUDHURI: Your Honor, may I move to admit  
25 the deposition of Michael Carter? Is there any objection to



1     that?

2                 MR. TROOP:  What's the ECF number?

3                 MR. CHOUDHURI:  It's attached as an exhibit.  It's  
4     attached to the motion to compel, and it's an exhibit.  It  
5     is a rough draft, Your Honor, but we did just today receive  
6     a final copy.

7                 THE COURT:  It's still going to have an ECF  
8     number, even it's got to be exhibit.  So I just need to know  
9     what the ECF number is.

10                MR. CHOUDHURI:  Yes, sir.

11                MR. SATHER:  499-22.

12                MR. CHOUDHURI:  Thank you.

13                THE COURT:  Again, Mr. Sather?  What?

14                MR. SATHER:  499-22.

15                THE COURT:  Any objection to 499-22?

16                MR. FITZMAURICE:  There is, Your Honor.

17                THE COURT:  Go ahead, ask -- go ahead.

18                MR. FITZMAURICE:  Mr. Carter is here.  Mr.  
19     Choudhri -- he already testified today.  Mr. Choudhri could  
20     have asked him then any questions that he wanted to ask.

21                THE COURT:  I'll sustain the objection of NBK to  
22     the admission of the deposition.  Thank you.

23                MR. CHOUDHURI:  So Your Honor, may I then recall  
24     Mr. Carter after I'm done because of the --

25                THE COURT:  You're going to have a chance to

1 present your evidence. But let's ask questions of this  
2 witness, please. Thank you.

3 MR. CHOUDHURI: Yes, Your Honor.

4 BY MR. CHOUDHURI:

5 Q So Mr. Murray, did you have conversations --

6 A When?

7 Q Did you or your counsel have conversations with Baker  
8 Botts, Tom Phillips, Justice Tom Phillips?

9 MR. FITZMAURICE: Objection, relevance.

10 THE COURT: What's the relevance?

11 MR. CHOUDHURI: Your Honor, It goes to the fact  
12 that there are assets of the estate and monies being offered  
13 to either prosecute those claims or sell those claims that  
14 can be used to stabilize the asset of the building so the  
15 building can then be sold for a lot more money than a fire  
16 sale and a value destroying sale.

17 MR. FITZMAURICE: That sounds at best like a  
18 confirmation issue, Judge, as opposed to whether or not the  
19 bank can credit bid.

20 THE COURT: I agree. I mean it's an objection to  
21 confirmation. It's not credit bidding.

22 BY MR. CHOUDHURI:

23 Q Do you recall having a conversation with me, Melissa  
24 Hayward, Jim Wetwiska, Jerry Alexander, R.J. Shannon and  
25 Kyung Lee on February 20th?

1 A Oh, your memory of that's better than mine. I think  
2 that was a Zoom meeting.

3 Q Right. Do you recall that?

4 A Yeah.

5 Q And do you recall at that meeting an assurance was made  
6 by you and Mr. Lee that we will not do a sale if there is no  
7 limit to a credit bid?

8 A I don't remember saying that.

9 Q Do you remember having any conversations with the Bank  
10 of Kuwait saying that if we don't limit the credit bid, it  
11 would affect the marketing and the sale of the building?

12 A I did -- I do remember those discussions, yes.

13 Q And what is the reason that the trustee decided to move  
14 forward with an option without a limit to the credit bid?

15 A Because while a cap on the credit bid, I think, would  
16 encourage more bidding, I don't think a lack of a cap on the  
17 credit bid is fatal to bidding and I think an auction is  
18 still in the estate's best interest, especially given that  
19 there's no other alternative that was viable then or now.

20 Q So earlier you just testified that NBK would not do an  
21 SNDA, right?

22 MR. FITZMAURICE: Objection, misstates the  
23 witness' testimony.

24 THE COURT: I'll sustain the objection.

25 BY MR. CHOUDHURI:

1 Q Did you present any leases to NBK since your  
2 appointment?

3 A Me, personally? No.

4 Q You or your representative?

5 A Yeah. My attorneys had copies of the leases. I know  
6 they talked to the bank's lawyers. I don't know if they  
7 shared or showed those leases to them. The bank's probably  
8 seen them in discovery since then. But I did not personally  
9 present a lease to the bank for their approval.

10 Q Do you think you needed the bank's approval?

11 A Yes.

12 Q But you chose not to present them any leases?

13 A Yep.

14 Q Can you explain why?

15 A Mr. Choudhri, again?

16 Q I just want to know, please. If you could just explain  
17 why you did present any leases to the bank for approval.

18 A I did not believe it was in the estate's best interest  
19 to enter into those leases. So there was no need to ask the  
20 bank's approval.

21 Q And everything you're testifying today is truthful here  
22 under oath, correct?

23 A Yes.

24 Q Do you remember having a conversation where I was --  
25 let me back up. Did you look into who Vaxanix is?

1 A No.

2 Q So you didn't look into who Vaxanix is at all?

3 A No. You told me a lot of things about them and the  
4 Dole family backing them and things like that. But no, I  
5 did not research who they were.

6 Q So did you receive terms with specific terms, amount  
7 per foot, how many years for the Vaxanix lease?

8 A You forwarded me an email with I think those terms and  
9 only those terms. And I said, that's not enough to go on,  
10 get me a lease. And it was sometime later you gave me a  
11 lease.

12 Q And so what did you do about the lease when you got the  
13 lease?

14 A By then I was pretty sure it was not a real offer.

15 Q But you gave the representative of Vaxanix your phone  
16 number, right? He asked for your phone number at the  
17 meeting on February 24th.

18 A He did.

19 Q And you gave him your phone number?

20 A I did.

21 Q And can you explain why you decided not to follow up  
22 with him and pursue to see if this lease was real or not,  
23 that's backed by the company that's owned by the Dole  
24 family?

25 A Well, this might be something where my recollection is

1 a little stronger than yours. We had that meeting very  
2 early on in the process. It was more than a month later  
3 that I got the email with the terms. And it was some time  
4 after that that you gave me the lease with all the terms in  
5 it and my thinking about whether something presented by you  
6 as an offer with respect to the building, my faith in that  
7 declined substantially during that time period to where by  
8 the time I got the lease from you, I was pretty sure it  
9 wasn't worth reading.

10 Q Why such hostility, Mr. Murray, towards me?

11 MR. FITZMAURICE: Objection. Objection, Your  
12 Honor, argumentative.

13 THE COURT: I'll sustain the objection. You can't  
14 argue with the witness.

15 BY MR. CHOUDHURI:

16 Q Mr. Murray, did you read the June 31st transcript?  
17 January 31 transcript, which was the motion to convert this  
18 case when the Chapter 11 trustee was appointed.

19 A Did I read the transcript? No, I listened to the  
20 audio, I think. Yeah. I did review that hearing, if that's  
21 your question.

22 Q Did you get any data from me or did you do any  
23 investigation on who Vaxanix is whatsoever?

24 MR. FITZMAURICE: Objection, Your Honor, asked and  
25 answered.

1                   THE COURT: I'll sustain the objection. Don't be  
2 repetitive, Mr. Choudhri.

3 BY MR. CHOUDHURI:

4 Q Do you know who IWG is?

5 A No.

6 Q International Workgroup, also a subsidiary  
7 (indiscernible) Regus.

8                   MR. FITZMAURICE: So objection, Your Honor, lacks  
9 foundation.

10                  THE COURT: I'll sustain the objection.

11 BY MR. CHOUDHURI:

12 Q Did you receive offers to sell the claim against the  
13 Bank of Kuwait?

14 A Yes.

15 Q How many?

16 A Two or three or four. A few.

17 Q And what did you do with them?

18                  MR. FITZMAURICE: So objection, Your Honor. These  
19 again sound like confirmation issues, not whether the bank  
20 should be allowed to credit bid.

21                  THE COURT: What's the relevance to credit  
22 bidding?

23                  MR. CHOUDHURI: Your Honor (indiscernible) that  
24 the position of to not pursue or sell the claim, not pursue  
25 or sell them the biggest asset of the estate, which is a

1 claim against the Bank of Kuwait because there's an  
2 agreement to pay unlimited admin expenses and there's an  
3 agreement where the trustee gets a significant commission on  
4 a sale versus reorganizing the asset and the emails as I --

5 THE COURT: That all sounds like plan confirmation  
6 to me. It doesn't sound anything at all like credit  
7 bidding. I'll sustain the objection. Thank you.

8 BY MR. CHOUDHURI:

9 Q Mr. Murray, did you tell Hilco not to communicate with  
10 me?

11 A No.

12 Q So if there's emails to that effect, you would dispute  
13 that?

14 MR. FITZMAURICE: Objection, Your Honor, lacks  
15 foundation. If there are emails, let's look at them.

16 THE COURT: I'll sustain the objection. Thank  
17 you.

18 BY MR. CHOUDHURI:

19 Q Mr. Murray, did NBK delay providing you support or  
20 approval or information you needed to get a cash collateral  
21 order approved in this case?

22 A Could you rephrase it? I'm not sure what you're  
23 asking.

24 Q Did NBK drag their feet in getting you approval or  
25 cooperation to come to court and get a cash collateral order



1 in this case?

2 A I don't know if they dragged their feet. I wanted it  
3 faster. It didn't happen faster, but it did happen.

4 Q Did you tell me that you wanted to abandon the  
5 building?

6 A I think in our discussions I said that was a  
7 possibility, that if the bank were not going to let me use  
8 cash collateral, that's what I would have to do.

9 Q And Mr. Murray, you recall that -- hang on. So Mr.  
10 Murray, the first time we met was on a Sunday, right?

11 A I think so.

12 Q And I texted you that I'm available for you 24/7?

13 A Yes, several times. Yeah.

14 Q And on Monday, you had a meeting with our accountants,  
15 Bob Norris. Do you recall that?

16 A I --

17 MR. FITZMAURICE: So again, Your Honor, objection  
18 to the bank's ability to credit bid at the auction tomorrow.

19 THE COURT: What's the relevance?

20 MR. CHOUDHURI: Your Honor, I'm getting there.

21 THE COURT: Well, I know you want to get there,  
22 but my question to you is, what is the relevance? Because  
23 if you can't explain it to me, then I'm going to cut you  
24 off. Okay. What's the relevance to credit bidding, which  
25 is what we're here for right now?

1           MR. CHOUDHURI: Your Honor, the relevance is that  
2     the bank has basically enlisted in allowing the trustee to  
3     only help them versus all the creditors and other creditors.

4           THE COURT: That'd be great if you pled that in  
5     your pleading, but you never said anything along those  
6     lines. And you don't get to come in here and do trial by  
7     ambush and just raise issues that weren't pled. So move on.  
8     Thank you.

9     BY MR. CHOUDHURI:

10    Q     Mr. Murray, when was a decision made to hire JLL?

11    A     I don't remember when.

12    Q     When was the decision made to sell the building and not  
13    lease it up?

14    A     As soon as it was clear NBK was going to commit to use  
15    cash collateral and pursue fund an auction process, that's  
16    when I decided to -- that was the most likely outcome.

17    Q     Did you receive an offer from QB Loop Property?

18    A     Yes.

19    Q     Did you have a Zoom call with Mr. Anwar Qadeer?

20    A     I don't remember if it was Zoom. I know I was on the  
21    phone with him at one point.

22    Q     And there was an offer made to buy the claims.

23           MR. FITZMAURICE: Your Honor, Mr. Murray doesn't  
24    need my help, but the same objection with respect to the  
25    relevance to credit bidding.

1           THE COURT: Again, what does this have to do with  
2 credit bidding? And I understand these are all potentially  
3 valid issues you might raise at plan confirmation, but as  
4 far as credit bidding, I don't see the relevance.

5           MR. CHOUDHURI: (indiscernible)

6           THE COURT: Mr. Choudhri, okay, so again, we're  
7 back to where we were before. Okay. I'm not going to let  
8 you ask repeated questions where you get overruled on  
9 objections, okay, or where I sustain objections based on  
10 questions that don't have any relevance to do with credit  
11 bidding. So move along. I'll give you a little bit more  
12 leeway, but then I'm going to ask you to sit back down  
13 again. Okay.

14 BY MR. CHOUDHURI:

15 Q     Would you agree with me if the building was more leased  
16 up, it would be more valuable?

17 A     No.

18 Q     The building would not be more valuable if it was  
19 leased up?

20 A     My only choices are yes and no. No, I don't know that  
21 that's necessarily the case.

22 Q     Have you hired an appraiser?

23 A     No.

24 Q     Did you represent to me in Feb. and the lawyers for the  
25 debtor 2425 that you were going to hire an appraiser?

1 A I don't even remember if we discussed that.

2 Q And R.J. Shannon and Kyung Lee are your lawyers,  
3 correct?

4 A Yes.

5 Q And they represent you and what they say and they speak  
6 on your behalf, when they speak on behalf of the trustee,  
7 correct?

8 A I would hope so, yes.

9 Q And you endorse what they do and what they say in  
10 representing you, correct?

11 MR. FITZMAURICE: Your Honor, again, relevance to  
12 the bank's credit bidding tomorrow at the auction.

13 THE COURT: Again, what is the relevance, Mr.  
14 Choudhri?

15 MR. CHOUDHURI: The relevance, Your Honor, is I  
16 have testimony from Mr. Carter and now testimony from Mr.  
17 Murray that is completely inconsistent with the  
18 communications with the bank and R.J. Shannon and Kyung Lee  
19 on their motivations of really what they want to do, and --

20 THE COURT: But what does it have to do with  
21 credit bidding?

22 MR. CHOUDHURI: Well, because they talk about  
23 credit bidding in those communications.

24 THE COURT: Okay. I'm going to sustain the  
25 objection and give you a little more leeway. Ask your next

1 question. Thank you.

2 BY MR. CHOUDHURI:

3 Q Mr. Murray, is there a reason that you would not  
4 support the bank accepting the \$26 million that's spelled  
5 out in the settlement agreement?

6 MR. FITZMAURICE: Objection, Your Honor, lacks  
7 foundation.

8 THE COURT: I'll sustain the objection. Thank  
9 you.

10 BY MR. CHOUDHURI:

11 Q Are you aware that your attorneys, you or your  
12 attorneys had a conversation with Jim Wetwiska and Jerry  
13 Alexander relating to the lender liability claims in this  
14 case?

15 MR. FITZMAURICE: Objection, Your Honor, hearsay.  
16 But also, what is the relevance to the credit bidding by the  
17 bank tomorrow.

18 THE COURT: I'll sustain the objection as to  
19 hearsay, even though I do think it's relevance. Go ahead.

20 BY MR. CHOUDHURI:

21 Q Mr. Murray, you filed a report to court about the  
22 status of the auction. Do you recall that?

23 A Yes.

24 Q And what is the current status as we sit here today?

25 A The current status is that I have received one

1 conforming bid. No, two conforming bids, one of which has  
2 funded escrow.

3 Q And that one is QB Loop Property?

4 A Yes.

5 Q Which is the same offer that you received through me  
6 back in April?

7 A Yeah, I think you sent me an offer from them.

8 Q March or April. And so, as we sit here today, on June  
9 the 17th, at 3:42 p.m., you have received one conforming  
10 offer, correct?

11 A Two conforming bids, one that funded.

12 Q And the funding deadline was 5:00 p.m.?

13 A Right. So yeah, one conforming --

14 Q So just so we're all clear, so on June the 14th,  
15 there's a bid deadline of 5:00 p.m.

16 A Yes.

17 Q And by 5:00 p.m., pursuant to your sale procedure  
18 motion that the Honorable Judge Norman has signed, the  
19 deadline to make a multimillion dollar deposit was 5:00  
20 p.m., Friday, June the 14th, correct?

21 A Yes.

22 Q And that has only been done by one bidder.

23 A Still yes.

24 Q And that is QB Loop Property, the general partner being  
25 Anwar Qadeer.

1                   MR. FITZMAURICE: So Your Honor, lacks foundation  
2 as to the general partner portion of that. The rest has  
3 been asked and answered three times.

4                   THE COURT: I'll sustain the objection as to the  
5 general partner position.

6 BY MR. CHOUDHURI:

7 Q The representative is Anwar Qadeer.

8 A I spoke with him. The representative now is -- they  
9 have a lawyer that counsels them.

10 Q Simon Mayer.

11 A Yes.

12 Q Right. With Locke Lord, correct?

13 A Mm-hmm.

14 Q And you're aware that the offer acceptance -- Hilco  
15 told you -- tell me if this is true or false. Did you  
16 represent to me that Hilco said they needed at least four  
17 months to market this building?

18 A No.

19 Q So you never said Hilco thinks it's going to be four  
20 months at least to market this building? Something like  
21 that never was made --

22 A I don't understand the question.

23                   MR. FITZMAURICE: Objection, Your Hono, asked  
24 answer.

25                   THE WITNESS: Oh, I'm sorry.

1           THE COURT: I'm sorry. I missed it. You said it  
2 so quickly, I didn't catch it.

3           MR. FITZMAURICE: I apologize, Your Honor. The  
4 objection is asked and answered.

5           THE COURT: I'll sustain the objection. Thank  
6 you.

7 BY MR. CHOUDHURI:

8 Q     Have you gotten a feasibility study on the building?

9 A     I don't know what that means.

10 Q    So what experience do you, Chris Murray, have in  
11 running and stabilizing or selling office buildings?

12           MR. FITZMAURICE: So objection, Your Honor, again,  
13 relevance to the bank's --

14           THE COURT: Yeah. What's the relevance to credit  
15 bidding?

16           MR. CHOUDHURI: Your Honor, as I go through the  
17 evidence I'm about to get through, it's going to show that  
18 the bank is basically -- the trustee is supporting only one  
19 creditor versus all the other creditors because they have  
20 unlimited admin expense that the bank has agreed to pay.  
21 And so the bank has designed this so that the sale is really  
22 a legitimization of them winning the bid and credit bidding.  
23 There's all kinds of bad faith that have taken place that  
24 have been completely ignored and not pursued.

25           THE COURT: I'll let you respond to that.



1           MR. FITZMAURICE: Sure. So there's no truth to  
2 any of that. There's no actual evidence anywhere of -- I  
3 think the claim is that the bank has agreed to pay an  
4 unlimited amount of administrative expenses. I don't want  
5 to tell Mr. Choudhri how to do the job he's trying to do.  
6 That's maybe a question that could be asked, but the rest of  
7 this is not. Again, at best would be confirmation. It's  
8 not related to the --

9           THE COURT: I'll sustain the objection.

10          Go ahead, Mr. Choudhri.

11 BY MR. CHOUDHURI:

12 Q     Mr. Murray, I asked you earlier if you knew who IWG was  
13 and your answer is you don't know or you know or --

14 A     I don't know. The name rings a bell, but I don't know.

15 Q     Have you heard of the company called Regus?

16 A     The office space, the temporary rentals? Yeah.

17 Q     And so Regus is a publicly traded company. You're  
18 aware of that?

19 A     Yes.

20 Q     Have you investigated the creditworthiness of IWG,  
21 which is the parent company of Regus?

22           MR. FITZMAURICE: Objection, Your Honor, lacks  
23 foundation to the corporate relationship.

24           THE COURT: I'll sustain the objection.

25           THE WITNESS: No, I haven't.

1 BY MR. CHOUDHURI:

2 Q Are you aware of a full floor lease on the second floor  
3 with a company called Hunan, HST, I think?

4 A No.

5 Q How many of these leases that you were provided have  
6 you reviewed, Mr. Murray?

7 A There were probably a dozen or more documents that said  
8 lease on them that I reviewed at one time or another.

9 Q But you didn't bother to pursue them because it came  
10 from me; is that fair?

11 MR. FITZMAURICE: Objection, Your Honor, asked and  
12 answered.

13 THE COURT: I'll sustain the objection. Thank  
14 you.

15 BY MR. CHOUDHURI:

16 Q And you chose not to pursue these leases? I think  
17 you've answered that earlier, but I just want to make sure  
18 the record is clear. You chose not to pursue these leases?

19 MR. FITZMAURICE: Your Honor, the record is clear.  
20 The question has been asked and answered.

21 THE COURT: I'll sustain the objection. Thank  
22 you.

23 BY MR. CHOUDHURI:

24 Q Mr. Murray, is there a reason that you stopped  
25 responding to my emails?

1 A Yes.

2 Q And what was that?

3 A I didn't think I could trust things you were telling  
4 me. I said you could communicate with me as long as you  
5 copied your own counsel and my counsel. And you did that  
6 for a time and then you stopped.

7 Q Were you upset that I cross-examined you at the final  
8 cash collateral -- or the cash collateral hearing?

9 A No.

10 MR. FITZMAURICE: Your Honor -- well, never mind.  
11 I'll withdraw.

12 THE COURT: Okay.

13 BY MR. CHOUDHURI:

14 Q Do you know who Edna Castillo is?

15 A No.

16 Q Are you aware that Hilco is marketing the building with  
17 the furniture?

18 MR. FITZMAURICE: Objection, Your Honor, lacks  
19 foundation. Also relevance to the bank's credit bid  
20 tomorrow.

21 THE COURT: I'll sustain the objection. Thank  
22 you.

23 BY MR. CHOUDHURI:

24 Q Does any bid, including a credit bid, include the  
25 furniture that's in the building?

1           MR. FITZMAURICE:  Objection, Your Honor.  I think  
2   the issue for today is the bank's entitlement to credit bid  
3   at all, not what assets --

4           THE COURT:  I'll sustain the objection.  Again,  
5   Mr. Choudhri, you're again back on very, very thin ground.  
6   I'm interested in the issues that relate to credit bidding,  
7   and that's the only thing I'm really interested in now.  And  
8   you have this pattern of asking questions that basically  
9   have no rational basis to the motion that's before the  
10  court.  And again, I'm going to give you a little bit of  
11  leeway, but I'm going to cut you off.

12          MR. SATHER:  Your Honor, we lost the --

13          THE COURT:  Because you didn't ask to project and  
14  I took it down because it was just sitting on the screen.  
15  So if you want to project something, I'm happy to give you  
16  the control back again.

17          MR. CHOUDHURI:  Your Honor, may I project, please?

18  BY MR. CHOUDHURI:

19  Q     Mr. Murray, is this your email --

20          MR. FITZMAURICE:  Your Honor --

21  BY MR. CHOUDHURI:

22  Q     Is this your email address?

23          MR. FITZMAURICE:  Your Honor, objection.  Without  
24  knowing if this is an exhibit that's on the list, if it's  
25  been filed, it has ECF reference or has otherwise been

1 provided before --

2 THE COURT: Do you we where it is on the record?

3 BY MR. CHOUDHURI:

4 Q Mr. Murray, who -- you were appointed on February the  
5 9th, correct? This year?

6 A That sounds right.

7 Q And which third parties did you engage in this  
8 transaction?

9 MR. FITZMAURICE: Objection, Your Honor, relevance  
10 to the bank's credit bid tomorrow at the auction.

11 THE COURT: Again, Mr. Choudhri, what's the  
12 relevance to credit bidding?

13 MR. CHOUDHURI: Your Honor, it goes to when he  
14 testifies earlier that he needs the bank's approval to do  
15 leases and there's no -- and then the bank testifies that  
16 they've received no leases, and he's saying he needs the  
17 bank's approval to do leases and the value --

18 THE COURT: That has absolutely nothing with  
19 credit bidding. Absolutely nothing. All right. So again,  
20 I'm going to sustain their objection and give you just a  
21 little bit more leeway before you hang yourself and I tell  
22 you to sit back down.

23 MR. CHOUDHURI: I'm trying to connect --

24 THE COURT: I turned you off because you're not  
25 projecting anything that's admissible. I'll turn you back

1 on, but if you want to put something in evidence, you're  
2 free to do so, but I'm just not going to let you project  
3 forever.

4 BY MR. CHOUDHURI:

5 Q Are you supportive of the bank's credit bid?

6 MR. FITZMAURICE: So -- well, withdrawn.

7 THE WITNESS: Yes.

8 THE COURT: Then I ask the question, then why is  
9 that?

10 THE WITNESS: Well, I'm supportive of any bid in  
11 an auction. I would love to sell the building.

12 THE COURT: All right. Thank you.

13 Go ahead.

14 BY MR. CHOUDHURI:

15 Q Can you explain to me, so there's a sale motion and  
16 there's a bid procedure. And the bid procedure says the  
17 minimum credit bid is \$18,600,000, correct?

18 A That's -- no, no. I don't think any of that's right.

19 Q I'm sorry. Stalking horse.

20 A Still no. There's bidding procedures. There's a  
21 stalking horse bid and that included a credit bid.

22 Q Stalking horse bid is \$18,600,000, correct?

23 A Yes. I think that's right.

24 Q And then it says, any additional bids above that are  
25 \$250,000 increments?

1 A The bid increment is \$250,000, yes, if I recall.

2 Q So \$18,600,000 will be the first bid. And under that  
3 process, there is no fee or commission to the trustee,  
4 correct?

5 A No, that's incorrect.

6 Q There is a commission to the trustee on a credit bid?

7 A Well, your question's not as simple as that. There  
8 would be a commission on disbursements in the case. I don't  
9 believe that a credit bid is a constructive disbursement  
10 under the case law, but that doesn't mean that there  
11 wouldn't be other monies flowing in connection with the sale  
12 of the stalking horse price that would result in a  
13 commission.

14 Q So as I understand it as we sit here today, the minimum  
15 credit -- the minimum bid right now on the stalking horse is  
16 \$18,600,000 and the next bid is \$18,850,000 which would be  
17 \$250,000 more, which is what Judge Norman approved.

18 A No. The way you're describing it is unclear and I'm  
19 not sure it's accurate. Could you maybe ask again?

20 Q So when I reviewed the civil motion, the civil -- the  
21 bid procedures, which incorporates, which has an element of  
22 credit bid embedded in it, it states that the minimum  
23 stalking horse bid is \$18,600,000 and the next bid is  
24 \$250,000. There's a definition called minimum overbid. So  
25 the next bid up is \$250,000 above \$18.6.

1 Q There's a minimum incremental overbid of \$250,000 in  
2 the bid procedures. Yes, that's right.

3 Q So the next bid would be \$18,850,000.

4 A Yes, I suppose. 18.6 plus 250, that math is correct.

5 Q So can you explain to me --

6 MR. CHOUDHURI: There's an exhibit, Mr. Sather, if  
7 you could pull up the Hilco. It's in -- I believe it's in  
8 one of the exhibits, and I could pull it up.

9 BY MR. CHOUDHURI:

10 Q Can you explain to me why -- now, you've hired Hilco,  
11 correct?

12 A Yes.

13 Q And Hilco is marketing the building at your instruction  
14 and direction?

15 A Yes.

16 Q And so the information they're giving to the market  
17 based on credit bids, based on what somebody's buying, that  
18 information is -- you're the source of that information?

19 A Yeah. I don't hear everything they say to everybody,  
20 but yes, I'm the source of the information and the marketing  
21 of the building and (indiscernible) --

22 Q And can you explain to me why the minimum bid that's  
23 being marketed to the public is \$19,750,000?

24 A Yes.

25 Q Please explain.



1       A       The minimum bid -- the minimum cash bid above the  
2       stalking horse credit bid for it to still be as worthwhile  
3       to the unsecured creditors is higher than just the 250  
4       increment. And it's higher because, in a cash bid scenario,  
5       multiple things change. One of them is that Hilco's  
6       commission goes up and that will require more cash. That's  
7       cash that would otherwise have flowed to creditors. There  
8       might also be incremental admins which the bank would cover,  
9       but that would come out of cash of the credit bid in that  
10      situation. Also, in a cash bid scenario, I believe that  
11      money would be part of the trustee's commission and that  
12      would increase the administrative expense there. So the  
13      difference between the minimum overbid and the stalking  
14      horse bid accounts for that incremental admin expense that  
15      happens when I take cash instead of a credit bid. And that  
16      has to be higher, because if it weren't, creditors would be  
17      worse off on the cash bid as opposed to the nominal amount  
18      of the credit bid.

19      Q       So as we sit here today, the credit bid is 18.6 by the  
20      Bank of Kuwait.

21      A       Yes.

22      Q       Other than the QB Loop Property making a bid?

23                   MR. FITZMAURICE: I think objection, vague as  
24      to --

25                   THE COURT: Be more specific in your question, Mr.

1 Choudhri.

2 MR. CHOUDHURI: Yes, sir.

3 BY MR. CHOUDHURI:

4 Q So as we sit here today, the bid by the National Bank  
5 of Kuwait is \$18,600,000. And the next bid that's there is  
6 by QB Loop Property.

7 A There is also a bid by QB Loop Property.

8 Q And that's the only qualified bid that is conforming.

9 MR. FITZMAURICE: So objection, Your Honor. I  
10 think it mischaracterizes the record. I would suggest the  
11 bank's bid is a qualified bid that's conforming under the  
12 court's order.

13 MR. CHOUDHURI: You're right. He's right.

14 THE COURT: Okay.

15 BY MR. CHOUDHURI:

16 Q So outside the bank's bid, that's the only qualified  
17 conforming bid is the bid from QB Loop Property.

18 A Right. The only bid that funded. And yeah, the bank  
19 is by definition a qualified bid. So yeah, I guess there's  
20 two.

21 MR. CHOUDHURI: Your Honor, may I -- I want to  
22 show an exhibit to the court.

23 BY MR. CHOUDHURI:

24 Q Does this look familiar to you, Mr. Murray?

25 A Yes.

1 Q And so we're talking about this here. The minimum  
2 overbid \$19,750,000. But that's not -- nobody's offered  
3 \$19,750,000 or anything above 18.6. Let me back up. That's  
4 a bad question. So the stalking horse bid is \$18,600,000.  
5 And this is the brochure that Hilco is presenting to the  
6 public, correct?

7 A Yes.

8 Q It says the minimum overbid before anybody else's bid  
9 is \$19,750,000.

10 A Yes.

11 Q Does that conform with Judge Norman's sale motion order  
12 in the bankruptcy --

13 A Yes.

14 Q It does?

15 A Yes.

16 Q So that \$250,000 from 18.6 to \$19.750, there's no other  
17 bidders that have made those bids?

18 A No. Both things can be true. The minimum increment  
19 can be 250 and the minimum cash overbid that, in my  
20 judgment, would be enough to provide the same benefit to  
21 creditors as the bank's nominal credit bid, those can be  
22 different numbers, and they are.

23 Q I'm just confused. So who's bid \$19.750?

24 A No one has.

25 Q So why is the minimum overbid \$19.750 when the sale

1 motion says 18.6 and 250 incremental bids above it?

2 A I can try to explain it again.

3 Q Because I don't understand it. I'm sorry. I've tried  
4 to understand it. I'm not understanding it. So if you can  
5 explain it.

6 THE COURT: One more time, and then I'll cut him  
7 off. Go ahead. Tell him again. I understand why it is,  
8 but go ahead.

9 THE WITNESS: Okay. A cash bid creates additional  
10 admin expenses for the estate that a credit bid does not.  
11 That is money that would otherwise go to unsecured  
12 creditors. So in order for unsecured creditors to do as  
13 well as they would under the nominal credit bid, the cash  
14 bid has to be substantially higher. I made an attempt to  
15 estimate how much higher. That's what I came up with.

16 BY MR. CHOUDHURI:

17 Q Mr. Murray, you and I have texted, correct?

18 A Yeah.

19 Q Do you recall telling me that you believe what the bank  
20 wanted to do was have a value destroying auction? Did you  
21 ever use the word value destroying auction?

22 A I don't know. I don't know. I don't know the context  
23 of what you're talking about.

24 Q When we had a discussion about leasing up the building,  
25 you represented to me that the bank does not want a lease of

1 the building because it'll give you an opportunity to add  
2 more value.

3 A I recall talking with you about what I assumed the bank  
4 might want or not want. But I don't speak for the bank.

5 Q Right. So the last appraisal on the property that  
6 you've seen or the bank has completed, as far as your  
7 knowledge, is June 2023.

8 A I really don't remember the dates of the appraisals.

9 Q But you've never gotten an appraisal?

10 A Right. I have not.

11 Q Is there any reason why you decided not to get an  
12 appraisal?

13 A They cost money. I didn't want to spend it. And if  
14 we're having an auction, that's better than an appraisal in  
15 terms of finding out money that I can get for an asset.

16 Q So have you reviewed the appraisal, the (indiscernible)  
17 appraisal that the bank has?

18 MR. FITZMAURICE: Objection, Your Honor, lacks  
19 foundation. But also relevance to the credit bid.

20 THE COURT: I'll sustain the objection as to  
21 relevance.

22 BY MR. CHOUDHURI:

23 Q Mr. Murray, was there any reason that you decided not  
24 to reorganize the debtor?

25 A In a sense, I am. I don't know what you mean. You

1 mean to continue operating -- well, I'll let you ask the  
2 question.

3 Q Has the bank agreed to give you -- to put no limit on  
4 the admin expenses in this case?

5 A Yes. Yes.

6 Q So there's no limit? Open checkbook?

7 A There might be some structural limits in the way the  
8 plan is made, but my understanding is they're going to cover  
9 with additional cash if necessary, all approved admins under  
10 the plan.

11 Q So when I ask what are the admin expenses so I can  
12 maybe make a better deal, a better offer to help and if the  
13 answer is it's not relevant, we're not going to tell you  
14 because it's unlimited, do you think that's reasonable and  
15 that's sound judgment, to not allow others to have an  
16 opportunity?

17 MR. FITZMAURICE: So objection, Your Honor,  
18 assumes facts not in evidence. I think it mischaracterizes  
19 the witness' testimony. It's also not relevant to the  
20 credit bidding in question.

21 THE COURT: I'll sustain the objection.

22 BY MR. CHOUDHURI:

23 Q Mr. Murray, are you aware that I had a conversation  
24 with R.J. Shannon on May 24th regarding takeout financing  
25 and having the trustee facilitate and help with takeout

1     financing and exit financing?

2     A     Yeah.  He told me you had a call.

3     Q     And your desire is to not entertain any takeout  
4     financing where the bank is taken out and a new lender is  
5     put in?

6     A     I would love that.

7     Q     You would love that?

8     A     Absolutely.

9     Q     So if a new lender comes in and takes out the Bank of  
10    Kuwait, you would be in support of that?

11    A     There's a lot --

12                 MR. FITZMAURICE:  So Your Honor, again, relevance  
13    to whether the bank can credit bid at the auction.

14                 THE COURT:  What is the relevance to credit  
15    bidding, Mr. Choudhri?  I mean, you're arguing about a plan,  
16    but we're not there yet.  We're not going to get there  
17    today.  So I need to know where you're going because I have  
18    almost reached the point of my limit where I'm just going to  
19    simply say no more.  All right.  If you have an issue as to  
20    credit bidding with Mr. Murray -- and I'm not sure what Mr.  
21    Murray does has anything to do with credit bidding at all,  
22    because your complaints really aren't against him.  They're  
23    against the bank -- then ask now or forever hold your peace.  
24    Okay.

25    BY MR. CHOUDHURI:

1 Q The sale motion was drafted by the Bank of Kuwait,  
2 correct?

3 MR. FITZMAURICE: Objection, Your Honor, asked and  
4 answered.

5 THE COURT: I'll sustain the objection. One more  
6 question.

7 MR. CHOUDHURI: I don't recall asking that  
8 question.

9 THE COURT: I do, and that's all that makes the  
10 difference.

11 MR. CHOUDHURI: Okay.

12 THE COURT: Thank you.

13 BY MR. CHOUDHURI:

14 Q So as we sit here, since you've been hired, there's  
15 nobody engaged, no professional engaged to lease the  
16 building, correct?

17 MR. FITZMAURICE: Objection, Your Honor, asked and  
18 answered.

19 THE COURT: I'll sustain the objection. You're  
20 done, Mr. Choudhri. Thanks. Thank you. Sit down.

21 All right. Mr. Fitzmaurice, do you have questions  
22 of this witness?

23 MR. FITZMAURICE: Just a couple, Your Honor.

24 THE COURT: Yeah. Go ahead.

25 CROSS-EXAMINATION OF CHRISTOPHER MURRAY



1 BY MR. FITZMAURICE:

2 Q Mr. Murray, are you familiar with the final cash  
3 collateral order that was entered in this case?

4 A Yes.

5 Q And the final cash collateral order contains  
6 stipulations between the estate on the one hand and the bank  
7 on the other; is that right?

8 A Yes.

9 Q And the final cash collateral order provides that if  
10 you as trustee don't bring a challenge to the validity and  
11 amount of the bank's lien by a date that is ten days before  
12 for the confirmation hearing, then those stipulations binds  
13 the estate and all parties in interest; is that right?

14 A That's my recollection.

15 Q Okay, and did you bring a challenge during the  
16 challenge period?

17 A No, I did not.

18 Q Do you recall that Mr. Choudhri asked you questions  
19 about Vaxanix?

20 A Yes.

21 Q There was a representative or a lawyer, I think, from  
22 Vaxanix named Faisal Shah?

23 A Yes.

24 Q Is he a tenant in the building?

25 A Yes.

1 Q At 2425 West Loop South?

2 A Yes.

3 Q Okay. Have you ever spoken to someone who actually  
4 works for Vaxanix?

5 A No, other than Mr. Shah, who said he represented them.

6 Q Yes.

7 A But no, no one --

8 Q Mr. Choudhri said that Mr. Shah represented them?

9 A Mr. Shah said that --

10 Q Okay.

11 A -- at a meeting where Mr. Choudhri introduced us.

12 Q Got it. During the course of the case, have you had  
13 occasion to ask the bank to approve the use of cash  
14 collateral?

15 A Yes.

16 Q Has the bank ever said no?

17 A No. Well, we asked for some things in the initial  
18 budget that you did not agree to. There have been  
19 subsequent requests and I don't think you've denied any of  
20 those.

21 Q Thank you. Thank you very much, Mr. Murray?

22 THE COURT: Mr. Burks?

23 MR. BURKS: Yes, Your Honor. Thank you. Your  
24 Honor, I'm addressing one area. There was reference to the  
25 final order authorizing the trustee to use collateral, cash

1 collateral. It's Document Number 187. Question was asked  
2 with language different than what's in the order and it was  
3 answered inappropriately. So I would like to put on the  
4 screen Document Number 187 so that we can see --

5 THE COURT: Where are you going to project from?  
6 Over there, right?

7 MR. BURKS: Yes.

8 THE COURT: Go ahead.

9 MR. BURKS: Document Number 187, final order  
10 authorizing the trustee to use cash collateral.

11 REDIRECT EXAMINATION OF CHRISTOPHER MURRAY

12 BY MR. BURKS:

13 Q All right. Sir, do you see it on the screen?

14 A I do.

15 Q Let's turn to Page 4, Paragraph 3.

16 MR. BURKS: Up a little more. Up a little more,  
17 please. Well, just (indiscernible) --

18 MR. SATHER: 3(a)?

19 MR. BURKS: 3(a) would be the top line and then  
20 (indiscernible) all right. Right there. Good.

21 BY MR. BURKS:

22 Q So you were asked a question about that a moment ago.  
23 When you answered the question of the affirmative, did you  
24 understand the question that was being asked to be not only  
25 what your duties were by a certain date, as far as objecting

1 to the NBK note or any defenses to it?

2 A I'm sorry?

3 Q Read that -- read that. I'm going to ask you two  
4 questions. Read that -- read that paragraph yourself,  
5 please. I'm reading it, too. When you're finished reading,  
6 let me know, sir.

7 A Okay.

8 Q Did you file any complaint or any pleading challenging  
9 the amount of allowance of the NBK claim?

10 A No.

11 Q Did you file any complaint or any other pleading  
12 seeking to equitably subordinate that claim?

13 A No.

14 Q And certainly, would you agree that especially if we  
15 have a hearing on June 18th, which the judge has said we  
16 are, that the time -- the time, it's more than ten days  
17 before a hearing, correct?

18 A Yes.

19 Q So you're not bringing any claim?

20 A I have not brought a claim by the deadline, no.

21 Q All right. Now, does it say anywhere in this paragraph  
22 that no other party can bring a claim?

23 A It says what it says.

24 Q Does it say anywhere in this paragraph that no other  
25 party can bring a claim?

1 A No, I don't see that.

2 Q Does it say that it concerns just --

3 MR. BURKS: So Your Honor, at this time I wish the  
4 court to take judicial notice of document number -- final  
5 order authorizing the trustee, Document Number 187.

6 THE COURT: I'll take judicial notice of that  
7 order. I signed it. Thank you.

8 MR. BURKS: Docket Number 321, order on motion to  
9 strike. Can we have that on the screen, please?

10 BY MR. BURKS:

11 Q Mr. Murray, I'll give you a chance to read that. Now  
12 this is National Bank of -- an order, National Bank of  
13 Kuwait's motion to strike the objection and claim of  
14 National Bank of Kuwait. You didn't file that objection to  
15 claim, did you?

16 A No.

17 Q Somebody else filed it?

18 A Yes.

19 Q And National Bank of Kuwait said, oh, let's move to  
20 strike it.

21 A It looks like they filed a motion to strike. Yes.

22 Q Did the say court say that the court disagrees with the  
23 argument of NBK that the final cash collateral order gives  
24 the exclusive right to object to the claims to the Chapter  
25 11 trustee. Do you see that?

1 A Yes, sir. You read that correctly.

2 Q So is it your position that if somebody else had a  
3 problem with the National Bank of Kuwait, you didn't have  
4 the duty to step in and make those objections?

5 MR. FITZMAURICE: Objection, Your Honor. It  
6 mischaracterizes the order, the witness' testimony. There  
7 is no -- there is no argument that Mr. Murray had a duty to  
8 do anything. The question is, what does the cash collateral  
9 order provide and what is its impact on creditors based on  
10 his decision to act or not act.

11 THE COURT: I'll let you respond, Mr. Burks.

12 MR. BURKS: I'm not asking -- I'm not presuming  
13 anything. I'm asking him does he think that he had a duty  
14 to object to claims if he disagreed with them or if he could  
15 have let somebody else do it. That's all I'm asking.

16 MR. FITZMAURICE: Your Honor, it also then calls  
17 for a legal conclusion about whether Mr. Murray had a duty  
18 to act in a particular circumstance.

19 MR. BURKS: This is --

20 THE COURT: I'm going to overrule the objection  
21 and let him answer the question.

22 Mr. Burks, go ahead.

23 MR. BURKS: I don't know -- I don't know if you've  
24 tracked the question to begin with, and I sure don't know if  
25 you've tracked --

1 THE WITNESS: I might have lost part of it.

2 MR. BURKS: Yeah.

3 THE WITNESS: If you could begin.

4 BY MR. BURKS:

5 Q Given the plain language of the final cash collateral  
6 order, given the judge's order of May 13th, do you view that  
7 if you disagree with the claim of National Bank of Kuwait,  
8 do you view that you had a duty to object to it?

9 A I think you're talking about two things. I'm going to  
10 try to answer them both.

11 Q Thanks.

12 A I think the cash collateral order said that if I want  
13 to bring certain claims or objections, I had a deadline to  
14 do it. I think I had the duty to evaluate whether bringing  
15 objections or claims was in the best interest of the estate.  
16 I made that determination. It was no, I didn't file those.  
17 I don't know what the order on the motion to strike has to  
18 do with that, or how to answer the second part of your  
19 question.

20 Q All right. Do you think that your failure to bring --  
21 your decision not to bring any action against National Bank  
22 of Kuwait or within the scope of the cash collateral order,  
23 do you think that somehow precludes any other party from  
24 being such a claim?

25 MR. FITZMAURICE: Your Honor, calls for a legal

1 conclusion.

2 THE COURT: The orders speak for themselves  
3 (indiscernible) Mr. Burks, what he thinks really doesn't  
4 make any difference. Thank you.

5 MR. BURKS: Thank you, Your Honor. I have no  
6 further questions, Judge.

7 THE COURT: All right. Mr. Choudhri? Mr.  
8 Choudhri, I warn you that the scope of your examination is  
9 limited to Mr. Fitzmaurice's questions and Mr. Burks'  
10 questions.

11 MR. CHOUDHURI: Thank you.

12 THE COURT: Thank you.

13 REDIRECT EXAMINATION OF CHRISTOPHER MURRAY

14 BY MR. CHOUDHURI:

15 Q Mr. Murray, I think I understood you to testify earlier  
16 that you are pursuing claims against the Bank of Kuwait; is  
17 that accurate?

18 MR. FITZMAURICE: Your Honor, I think that's  
19 beyond the scope.

20 THE COURT: It's outside the scope.

21 BY MR. CHOUDHURI:

22 Q Were there graphs and documents that you received from  
23 the Bank of Kuwait that I asked you for that included credit  
24 bid comments that you said you could not provide and you'd  
25 have to ask Kyung Lee to provide? Do you recall that



1 conversation?

2 MR. FITZMAURICE: So same objection, Your Honor.

3 THE COURT: Again, Mr. Choudhri, that's totally  
4 outside the scope of the two prior examining attorneys.  
5 You're limited only to questions or issues that they raised.  
6 You don't get another chance at the witness.

7 BY MR. CHOUDHURI:

8 Q So Mr. Murray, do you believe that you can still bring  
9 claims? Let me back up. Have you valued the claims against  
10 the Bank of Kuwait?

11 A Yes.

12 Q And what have you valued them at?

13 A There's not really a specific number. I have a sense  
14 of a range of value.

15 Q And what is that range?

16 A It's below what unsecured creditors are getting under  
17 the plan.

18 Q And what are the unsecured creditors getting under the  
19 plan?

20 A Trade gets 70 percent. Everybody gets a share in the  
21 liquidating trust, which is prefunded with 150 and then  
22 whatever the claims fall out to be. They haven't gone  
23 through that process yet.

24 Q So that's -- so approximately under \$400,000.

25 A The minimum. Yeah, 388, I think.

1 Q So \$388,000.

2 A Yeah.

3 Q And are you aware of an offer that was made for  
4 \$700,000 cash for claims that the estate owns and holds?  
5 Did you receive an offer for \$700,000 cash with a cashier's  
6 check payable to Chris Murray, trustee and, on the memo,  
7 purchase of NBK claims, cashier's check in the amount of  
8 \$700,000? Did you receive a copy of the cashier's checking  
9 with the offer?

10 A Was this the one from like a day or so ago?

11 Q On June the 13th?

12 A Oh, okay. Yes.

13 Q And you rejected that?

14 A Yes.

15 Q And what's the reason of rejecting that?

16 A It's not an apples to apples comparison with the amount  
17 of cash the unsecured creditors get. Also, I'm not sure  
18 it's a valid offer. Also, the last time an entity of yours  
19 wanted to buy claims, I said that the proof of funds needed  
20 to be the money in the bank in attorney's IOLTA account.  
21 That happened, and I sold those claims. That did not happen  
22 this time.

23 Q Did you receive a copy of the cashier's check?

24 A I saw an image of what looked like a cashier's check.

25 Q So if you receive a cashier's check for \$700,000 for

1 claims against the Bank of Kuwait or if it was wired into  
2 the account versus a cashier's check if the cashier's check  
3 isn't good enough, then --

4 A The money is just one problem.

5 Q What's the other problem?

6 A The other problem is, under the bank's plan, unsecured  
7 creditors get the cash that I mentioned. If you buy those  
8 claims, I lose the plan and you've withdrawn the only  
9 alternative plan. So I either abandon the asset and we  
10 convert and then I take the 700 and I throw it against admin  
11 claims which already exceed that amount. So then there will  
12 be nothing for the unsecured creditors. But are you asking  
13 that question as Ali Choudhri personally or as the entity  
14 represented by counsel who made the purported offer?  
15 Because maybe they're not the same.

16 Q Right. I'm asking you if you received an offer to sell  
17 the claims which demonstrate there's some value. These  
18 claims have value. Let me back up. Did the Bank of Kuwait  
19 give you an investigation fund that limited your  
20 investigation to only two weeks?

21 MR. FITZMAURICE: Objection, Your Honor, relevance  
22 to the bank's credit bid tomorrow. We've gone on this path  
23 and an adjacent one for a while, but I don't know what the  
24 connection is to the --

25 THE COURT: I'm not sure I see the relevance.

1           Mr. Choudhri, I'll let you argue relevance.

2   BY MR. CHOUDHURI:

3   Q     Is it your understanding that the plan --

4           THE COURT:  Then I'll sustain the objection.

5   Thank you.

6           MR. FITZMAURICE:  Thank you, Your Honor.

7           MR. CHOUDHURI:  Sorry?

8           THE COURT:  Go ahead.

9   BY MR. CHOUDHURI:

10   Q     The plan and the sale of the property is part and  
11   parcel -- NBK's plan and the sale of the property is part  
12   and parcel.

13           MR. FITZMAURICE:  So objection, Your Honor, I  
14   think we dealt with this issue earlier and Your Honor --

15           THE COURT:  I'll sustain the objection.  Thank  
16   you.

17   BY MR. CHOUDHURI:

18   Q     So when you say you're pursuing the claims against the  
19   bank, are you pursuing the claims against the bank or are  
20   you not pursuing the claims as we sit here today?

21           MR. FITZMAURICE:  So Your Honor, objection,  
22   compound, but also relevance to the credit bidding.

23           THE COURT:  Again, Mr. Choudhri, where are we  
24   headed as it relates to the issue that we're here right now  
25   trying to try?  I want to give you every opportunity before

1 I cut you off again for I think what is probably the fifth  
2 time for you to make a rational argument as to why I should  
3 allow this testimony on a motion to prohibit credit bidding.  
4 And I understand you have legitimate concerns about plan  
5 confirmation. We're not at plan confirmation.

6 BY MR. CHOUDHURI:

7 Q Did you have conversations with Hilco --

8 THE COURT: No, no. I need you to respond to me.

9 MR. CHOUDHURI: Sure.

10 THE COURT: Because you haven't responded. You  
11 just simply are being silent. Is there some basis, some  
12 rational basis for this to have any relevance to the issue  
13 that I'm about to decide?

14 MR. CHOUDHURI: Your Honor, I believe it goes to  
15 motivation --

16 THE COURT: Motivation for what?

17 MR. CHOUDHURI: Personal interest of the trustee  
18 (indiscernible) --

19 THE COURT: Which has absolutely -- again has  
20 absolutely nothing to do with credit bidding. Okay, and I  
21 don't have to explain that to you. But it doesn't. Okay.  
22 So move on. I'll give you a little bit of leeway, but if  
23 you go down this road, you're going to be sitting down in  
24 like two seconds.

25 BY MR. CHOUDHURI:

1 Q Did you have discussions with Hilco about credit  
2 bidding?

3 A Yes.

4 Q Did you have email communications with Hilco about  
5 credit bidding?

6 A I don't remember how we communicated. It was usually  
7 by phone, but I've talked to them about credit bidding.

8 Q And what was Hilco's perspective about credit bidding?

9 A In what sense?

10 Q Would credit bidding deter buyers, motivate buyers or  
11 deter buyers?

12 A I honestly don't remember what they said about it. My  
13 impression from all of that was that the existence of a  
14 credit bid might limit sort of the number of people who  
15 would also participate.

16 Q So credit bid basically chills bidders, chills the  
17 buyer pool of people who potentially did.

18 MR. FITZMAURICE: Objection, Your Honor, to the  
19 use of the term chilling. It mischaracterizes the witness'  
20 testimony.

21 THE COURT: I'll overrule the objection. Go  
22 ahead.

23 THE WITNESS: Yeah. I mean, all things being  
24 equal, it's not as good as not credit bidding. The same  
25 effect happens when somebody with extremely deep pockets

1 shows up at the auction. You have the risk of being outbid,  
2 and then some people might not participate in an auction  
3 that they might lose. So, yeah.

4 BY MR. CHOUDHURI:

5 Q DO you have a range or assessment of what the property  
6 is worth?

7 A Not really. I mean, only a very wide range.

8 Q And what would that wide range be?

9 A Well, there's a credit bid stalking horse minus other  
10 things that have to get paid and that sort of value the  
11 building to the estate. And on the other end, there's  
12 whatever I can get at auction. I don't know what that's  
13 going to be.

14 Q But as we sit here today, there's only one bidder, non-  
15 stalking horse bidder at this auction, correct?

16 A Yes.

17 Q So would it be fair -- I think you've already answered  
18 this. I think I'm almost done -- that when the public knows  
19 there's credit bidding by a bank that has no limitations on  
20 that credit bid that -- let me back up. Do you believe  
21 that's a true market test when there's a credit bid that's  
22 unlimited?

23 MR. FITZMAURICE: So --

24 THE WITNESS: The credit bid's not unlimited. But  
25 yes, I do think it's a fair market test. I think it's what

1 happens in almost every single bankruptcy case where there's  
2 a secured lender willing to participate in a process like  
3 this. It happens all the time. It's also almost  
4 definitionally what a foreclosure is.

5 BY MR. CHOUDHURI:

6 Q So this auction, is this a foreclosure or is this an  
7 auction to determine the market test of the property?

8 A This is an auction for the property by me.

9 Q Not a foreclosure?

10 A That's a state law term. I was using a colloquial to  
11 refer to when a secured lender bids against a property and  
12 it's forced to sell.

13 Q And so is there a possibility, in your opinion, if it's  
14 found that the Bank of Kuwait is nonexistent, doesn't have a  
15 claim?

16 MR. FITZMAURICE: So I'm not sure there's a  
17 question, Your Honor. But I feel like it calls for  
18 speculation, if there is one.

19 THE COURT: I think so too, and I'll sustain the  
20 objection.

21 BY MR. CHOUDHURI:

22 Q Mr. Murray, if there was more time to market and sell  
23 this property, and if there was someone like CBRE or  
24 Transwestern to lease the property, or analyze the leases  
25 that you have, if they're valid or good or not, and spend



1     about 60 to 90 days, in your opinion, would that add more  
2     value and bring more buyers?

3             MR. FITZMAURICE:  Objection, Your Honor, calls for  
4     speculation.  It's also not relevant.

5             THE COURT:  I'll sustain -- I'll sustain the  
6     objection as to it's speculation.  Thank you.

7     BY MR. CHOUDHURI:

8     Q     Mr. Murray, if more time is spent marketing the  
9     property, would that potentially result in a higher price  
10    with more buyers?

11            MR. FITZMAURICE:  Objection, Your Honor, calls for  
12    speculation.  Also not relevant to whether or not the bank  
13    is entitled to credit bid.

14            THE COURT:  I'll sustain the objection as to  
15    relevance.  Again, and if you want to make that argument  
16    tomorrow at plan confirmation -- excuse me, on Wednesday at  
17    plan confirmation, feel free to.  But it has nothing to do  
18    with credit bidding..

19    BY MR. CHOUDHURI:

20    Q     Is there any element of credit bidding in the plan, Mr.  
21    Murray?

22            MR. FITZMAURICE:  Objection, Your Honor.  This is  
23    -- I mean, the plan, that's a confirmation issue.  We're  
24    here about whether we're entitled to credit bid at the  
25    auction.

1 MR. CHOUDHURI: I was talking about credit  
2 bidding, Your Honor. I was asking about credit bidding --

3 MR. FITZMAURICE: In the plan.

4 THE COURT: I'll sustain the objection. Ask  
5 another question.

6 BY MR. CHOUDHURI:

7 Q Mr. Murray, do you believe there are various exposure  
8 or liability for the Bank of Kuwait with the -- do you  
9 believe the estate has any legitimate claims against the  
10 National Bank of Kuwait?

11 A Yes.

12 MR. TROOP: Sit down and shut up.

13 MR. CHOUDHURI: No further questions.

14 THE COURT: All right. Thank you.

15 All right. Let me go back to Mr. Fitzmaurice.

16 RECROSS-EXAMINATION OF CHRISTOPHER MURRAY

17 BY MR. FITZMAURICE:

18 Q Just one question, Mr. Murray. Have you made an  
19 assessment of the value of those claims?

20 A Yes.

21 Q Sorry. I lied. It's two. What is that assessment  
22 worth?

23 A The value of those claims is something, but it's much  
24 less than what the estate is getting through this plan  
25 process.

1 Q Thank you, Mr. Murray.

2 THE COURT: Mr. Burks?

3 MR. BURKS: May I confer for less than 60 seconds  
4 only?

5 THE COURT: You may have 30 seconds, which is less  
6 than 60 seconds.

7 MR. BURKS: Your Honor, may I?

8 THE COURT: Yeah, with time to spare.

9 REDIRECT EXAMINATION OF CHRISTOPHER MURRAY

10 BY MR. BURKS:

11 Q Mr. Murray, you submitted at Docket Number 452 a  
12 Chapter 11 trustee status report on the marketing process.  
13 Let me make sure you submitted it. Yes, it has been  
14 submitted. We're pulling that up so that you don't have to  
15 remember. First of all, it's kind of late. Secondly, I  
16 wouldn't remember it. I'm talking to fill the time for Mr.  
17 Baker to find the document.

18 Q I'm blushing.

19 MR. BURKS: (indiscernible) pull it down so we can  
20 see the left bullet point in Paragraph 4, Mr. Baker. Thank  
21 you, sir.

22 BY MR. BURKS:

23 Q Review Paragraph 4 before I ask you any questions,  
24 please, Mr. Murray.

25 A Sure. Okay. I've read it.

1 Q You've been a trustee before in other cases?

2 A Yes.

3 Q You've sold property before?

4 A Yes.

5 Q You've sold property with credit bids before?

6 A As a trustee, I don't think so.

7 Q All right. What do you think would happen if these 50  
8 parties who had initiated (indiscernible), the 24 who have  
9 signed the disclosure agreements, and the eight parties who  
10 have conducted onsite inspections, what do you think would  
11 happen if they were sent notices by you saying come to the  
12 auction, there is no credit bidding?

13 MR. FITZMAURICE: Objection, Your Honor, calls for  
14 speculation.

15 THE COURT: I'll sustain the objection. Thank  
16 you.

17 BY MR. BURKS:

18 Q Do you believe that you would have more than one  
19 qualifying bid if there had been no credit bidding.

20 MR. FITZMAURICE: Same objection, Your Honor.

21 THE COURT: I'll sustain the objection. Thank  
22 you.

23 BY MR. BURKS:

24 Q Do you believe you would have more bids if there was no  
25 credit bidding?

1 MR. FITZMAURICE: Same objection, Your Honor.

2 THE COURT: I'll sustain the objection. Thank  
3 you.

4 BY MR. BURKS:

5 Q Is the only way to find out what the effect is on the  
6 bidding of these people who are interested, is the only way  
7 to find out to have no credit bid?

8 MR. FITZMAURICE: Objection, Your Honor, calls for  
9 speculation.

10 THE COURT: I'll sustain the objection.

11 MR. BURKS: Nothing further, Your Honor.

12 THE COURT: Thank you.

13 Mr. Choudhri, back to you. Again, very, very  
14 limited. Do you have anything that you want to add?

15 REDIRECT EXAMINATION OF CHRISTOPHER MURRAY

16 BY MR. CHOUDHURI:

17 Q Mr. Murray, I just want to ask you, so Hilco marketed  
18 the property for approximately three weeks; is that  
19 accurate?

20 MR. FITZMAURICE: I think that's beyond the scope,  
21 Your Honor.

22 THE COURT: I think it's beyond the scope. Again,  
23 you're limited in what you can ask, Mr. Choudhri.

24 BY MR. CHOUDHURI:

25 Q Mr. Murray, do you believe it would be a more fair

1 auction if everybody just was treated equally at the auction  
2 and they had to pay if they bid on the property  
3 (indiscernible) --

4 MR. FITZMAURICE: So objection, Your Honor, calls  
5 for speculation. Also calls for -- it suggests that the  
6 auction is not fair, which I think is inconsistent with the  
7 evidence and the witness' testimony.

8 THE COURT: I'll sustain the objection. Thank  
9 you. Go ahead and ask another question.

10 BY MR. CHOUDHURI:

11 Q Mr. Murray, do you believe the bank wants this  
12 building? They want to own the building?

13 A I don't know.

14 Q They haven't told you one way or the other?

15 A No.

16 Q So if they wanted to buy the building, would you be  
17 supportive if they bid like everybody else?

18 MR. FITZMAURICE: So objection, Your Honor, calls  
19 for speculation. I also think we're beyond the scope.

20 THE COURT: I'll sustain the objection.

21 BY MR. CHOUDHURI:

22 Q Mr. Murray, pursuant to the sale motion, you have  
23 discretion to move the auction date, correct?

24 MR. FITZMAURICE: So objection, Your Honor, both  
25 beyond the scope and not relevant to the bank's credit bid.

1           THE COURT: I'll sustain the objection. But I  
2 will say that I know he's got some ability. So I know that.  
3 I'm always amazed when lawyers ask questions I already know  
4 the answer to. Go ahead.

5           MR. TROOP: He's not a lawyer.

6 BY MR. CHOUDHURI:

7 Q     Mr. Murray, since you were appointed, one of your  
8 suggestions was -- and my suggestion was that since  
9 (indiscernible) control over the estate and the  
10 counterparties being the National Bank of Kuwait and the  
11 other creditors should have a sit-down, and mediation to  
12 work out whatever challenges or issues. Do you recall  
13 having that conversation with me, which included how the  
14 credit bid issues would be dealt with?

15          MR. FITZMAURICE: So objection, Your Honor, both  
16 beyond the scope and not relevant to the credit bid.

17          THE COURT: It's way, way beyond the scope of what  
18 was asked, Mr. Choudhri. So you're going to get one more  
19 question, and then I'm going to tell you to sit down,  
20 please.

21 BY MR. CHOUDHURI:

22 Q     Mr. Murray, would you be openminded to considering what  
23 is the best and pivot your position or decisions based on  
24 what maximizes the value for the creditors in the estate?

25 A     For sure, yes.

1 Q Thank you.

2 A Always.

3 Q Thank you.

4 THE COURT: Thank you.

5 All right. Mr. Fitzmaurice?

6 MR. FITZMAURICE: Nothing further at this time,  
7 although, Your Honor --

8 THE COURT: We've killed a dead horse. Thank you.

9 MR. FITZMAURICE: Your Honor, just to the extent  
10 that we end up putting on a case on this motion, then we  
11 would reserve the right to call Mr. Murray during that case.

12 THE COURT: That's fine. Thank you.

13 All right. Mr. Burks, any other questions based  
14 on what limited questions Mr. Choudhri asked?

15 MR. BURKS: If you ask it that way, and even if  
16 you hadn't, no, Your Honor.

17 THE COURT: Okay. Thank you. Do you have another  
18 witness?

19 Thank you, sir. You may step down.

20 MR. MURRAY: Thank you.

21 MR. BURKS: Your Honor, may I speak with Mr.  
22 Choudhri before I answer that question?

23 THE COURT: Sure. Feel free. Mr. Burks?

24 MR. BURKS: I'm faced with a conundrum. The  
25 principal of my client wants me to call up to three more



1 words. I have been watching Mr. Choudhri. I want this -- I  
2 want him home resting. So I don't know what to do. I mean,  
3 he -- Mr. Choudhri should not be standing in this courtroom  
4 right now. I'm watching the signs of --

5 THE COURT: Mr. Burks, you can either call a  
6 witness or not call a witness. I don't care. I'm here  
7 until we get done. If your client wants you to call  
8 witnesses, call witnesses. I was going to comment that Mr.  
9 Choudhri seems to be doing remarkably well. So I'm not  
10 worried about his health at this point in time.

11 MR. BURKS: I defer to you. Yes, Your Honor. I  
12 have (indiscernible) witness. One moment.

13 THE COURT: Go ahead.

14 MR. BURKS: But, Your Honor, for clarification,  
15 noting prevents Mr. Choudhri from calling any of these  
16 witnesses?

17 THE COURT: That's correct, other than to the  
18 extent he's not represented by a lawyer. He's not doing  
19 himself any favors.

20 MR. BURKS: Thank you for saying that. I hear  
21 you.

22 MAN 1: May I see the witness list, please? Make  
23 sure that the person's on there. Hilco.

24 THE COURT: All right. Mr. Burks, it's time to  
25 call a witness. My patience -- my patience is growing thin.

1 Who do you want to call?

2 MR. BURKS: Your Honor, I'm looking for the name  
3 of the Hilco witness that was identified by NBK, and I'm  
4 looking for that name right now (indiscernible) --

5 MR. BAKER: Kneifel, Kneifel.

6 MR. BURKS: What?

7 MR. BAKER: Kneifel or Kneifel. He was on --

8 MR. BURKS: Kneifel?

9 MR. BAKER: Yeah. K-N-E-I, something. He was on  
10 the Zoom before.

11 MR. BURKS: Right.

12 MR. BAKER: Let's see.

13 MR. BURKS: I call Mr. Kneifel of Hilco, Your  
14 Honor. He was on Zoom before.

15 THE COURT: If he's there, I'm happy to have him  
16 testify. He's not there currently, I don't think.

17 CLERK: K-N-E-I (indiscernible) he's not.

18 THE COURT: Is Steve Madeira online, Tracy?

19 CLERK: Yes, sir.

20 THE COURT: If they want to show up on my screen,  
21 they can show up on my screen.

22 MR. BAKER: Are they there? The Hilco  
23 representative?

24 THE COURT: Mr. Burks, those are the people who  
25 are connected on the line. So if you want to call another

1 witness and try and have someone make arrangements to get  
2 him on GoToMeeting, I'm happy to hear from him. But let's  
3 call someone else. You're wasting my time and everyone  
4 else's time. And everyone's billing at very, very high  
5 rates. Who do you want to call?

6 MR. BURKS: No, Your Honor. Thank you very much.

7 THE COURT: Call a witness.

8 MR. BURKS: I don't -- I don't see the Hilco  
9 witness.

10 THE COURT: Then call another witness. Let's get  
11 it done. Okay. Let's move along. You can get him on the  
12 phone and get him going.

13 MR. TROOP: Your Honor, just to be perfectly  
14 clear, we identified Hilco as a witness with a notice to  
15 produce. I don't believe that Mr. Choudhri filed anything  
16 with a notice to produce.

17 THE COURT: If he's not here under a subpoena, I  
18 can't make him testify.

19 MR. TROOP: And I don't think there's a subpoena.

20 THE COURT: Okay.

21 MR. TROOP: I don't know. If no one tells me when  
22 they serve subpoenas, Your Honor (indiscernible) --

23 THE COURT: Okay.

24 MR. BURKS: Your Honor, I have no other witness  
25 available that I can call.

1 THE COURT: All right. That's fine.

2 Okay. So Mr. Choudhri, do you have a witness you  
3 want to call?

4 MR. CHOUDHURI: (indiscernible) try to get on  
5 (indiscernible) --

6 THE COURT: Okay. So who are you calling first of  
7 all?

8 MR. CHOUDHURI: Thomas Phillips.

9 THE COURT: Thomas Phillips?

10 MR. CHOUDHURI: Yes.

11 THE COURT: I'll give you a few minutes to see if  
12 you can get him to connect.

13 MR. BURKS: Your Honor, while we wait, I want to  
14 acknowledge the bench and thank you for the patience you  
15 just showed me.

16 THE COURT: Not needed. Thank you.

17 Mr. Choudhri, I need you to call a witness. We're  
18 not going to sit here and wait. Do you have someone else  
19 you want to call?

20 MR. CHOUDHURI: (indiscernible) Phillips is just  
21 logging in.

22 THE COURT: Do you have another witness past Mr.  
23 Phillips?

24 MR. CHOUDHURI: Yes, Your Honor.

25 THE COURT: Then you need to get him on the -- get

1 him on the horn so we won't have to wait. Okay.

2 MR. CHOUDHURI: I call Mr. Charles Conrad.

3 THE COURT: Mr. Conrad, come on forward. I'll  
4 swear you in. Please raise your right hand to be sworn. Do  
5 you swear or affirm to tell the truth, the whole truth and  
6 nothing but the truth, so help you God?

7 MR. CONRAD: I do.

8 THE COURT: All right. Please be seated, sir.

9 Mr. Choudhri, come on up. Start. Let's go.

10 DIRECT EXAMINATION OF CHARLES CONRAD

11 BY MR. CHOUDHURI:

12 Q Good evening, Mr. Conrad.

13 A Good evening.

14 Q Do you represent the National Bank of Kuwait?

15 A Correct.

16 Q And all actions you've taken in relation to this case  
17 or the state court or the federal court cases in the  
18 capacity as a representative and attorney for the National  
19 Bank of Kuwait, right?

20 MR. FITZMAURICE: Objection, Your Honor, relevance  
21 to the whether the bank's entitled to credit bid at the  
22 auction tomorrow.

23 THE COURT: It's preliminary. We'll get there.  
24 That's fine. I'll overrule the objection as to preliminary  
25 matters.

1                   Go ahead, Mr. Conrad.

2                   THE WITNESS: The answer is yes.

3   BY MR. CHOUDHURI:

4   Q     Mr. Conrad, are you aware who Paul Caldwell is?

5   A     I don't know who he is.

6   Q     Have you ever spoken to Paul Caldwell?

7   A     I have not.

8   Q     You've never had a conversation with Paul Caldwell?

9   A     I've never had a conversation with Paul Caldwell.

10   Q     Any email communication?

11   A     I have had emails with I recall, like, his assistant.

12   Q     But he never emailed you?

13   A     Not that I'm aware of, but I don't recall exactly. I  
14   do remember emails trying to schedule a call.

15   Q     Were you aware of that Pillsbury represents Paul  
16   Caldwell.

17   A     I'm not aware of that.

18   Q     Did you ever represent that in state court, that the  
19   settlement agreement does not exist?

20   A     I don't understand the context of your question, but  
21   the settlement agreement is a document that does exist.

22   Q     I believe it's been made as an exhibit to this case.  
23   Mr. Conrad, are you familiar with the June 12th hearing that  
24   took place.

25   A     Generally.

1 Q Did you represent to the state court, Judge Weems --  
2 let me back up. Mr. Conrad, were you there in March at a  
3 meeting with Judge Weems' court in March of 2022 when the  
4 temporary injunction was entered in favor of the debtor.

5 A Yes.

6 Q And what was the outcome of that injunction hearing?

7 A A temporary restraining order was granted, that the  
8 case was put on an accelerated trial schedule where we were  
9 preferentially set, I believe, at the beginning of September  
10 of 2023, September 6th, I believe. And then a bond was  
11 required to be posted in conjunction with a temporary  
12 injunction.

13 Q You were here earlier from Mr. Wetwiska's testimony,  
14 right?

15 A Yes.

16 Q In fact, I believe you cross-examined him.

17 A Yes.

18 Q Mr. Conrad, I would like you to look at Page 59. I'll  
19 represent to you, this is Page 59. Now I'm going to go to  
20 the bottom of Page 59, Line 22.

21 A Okay.

22 Q Can you read that into the record, your statement?

23 A Well, it looks like it's partial, with Lines 22 to 25,  
24 but it says:

25 "Mr. Conrad: Your Honor, I'm sorry. I completely

1 understand that. I just want to make sure that, like again,  
2 it can't be part of the 2023, you know, contract claim  
3 because the settlement agreement doesn't exist anymore. The  
4 court didn't extend the," there's a redaction, the  
5 settlement agreement.

6 Q So you're telling the court -- do you know who DC  
7 Partners is?

8 A Generally.

9 Q Are you aware that they're a tenant I was able to put  
10 into the building to take the entire seventh floor?

11 A I'm not aware of that.

12 Q Have you seen the DC Partners' lease I presented to you  
13 at any time?

14 A I generally know who DC Partners is, but I don't know  
15 that any lease has a DC Partners name on it.

16 Q Would it be fair to say -- or I think you understand  
17 that that is a name, another name of the entity is also  
18 known as St. Christopher Holdings?

19 A I don't know that.

20 Q What is the reason that a loan sale agreement was never  
21 provided or requested?

22 MR. FITZMAURICE: Objection, Your Honor.  
23 Objection, Your Honor, lacks foundation, mischaracterizes  
24 the evidence. We saw an exhibit that in fact sent one.

25 THE COURT: I'll sustain the objection.



1 BY MR. CHOUDHURI:

2 Q Did Mr. Wetwiska ask you for a loan sale agreement in  
3 2023?

4 A And we've looked at the documents. There was a June  
5 28th correspondence where, for the very first time, Mr.  
6 Wetwiska asked for certain documents in advance of a July 3,  
7 2023 date deadline that was given by the court in extending  
8 the time for performance for you and/or any other purchaser  
9 to perform the settlement agreement, which we did. We  
10 produced those documents.

11 Q Were those the final loan sale documents?

12 A I don't know what you mean by final.

13 Q We have a final set of closing documents. This is what  
14 the bank will agree to. This is final. Here it is. Was  
15 that ever provided?

16 A Well, I still don't understand the question because, if  
17 I may explain, when you say final, that would mean that you  
18 --

19 MR. CHOUDHURI: I object. I object to  
20 nonresponsive.

21 THE WITNESS: Well that might mean that you have  
22 to agree to all them too. We held nothing back from any of  
23 your attorneys, you, anyone in response to those documents  
24 being sent other than to hear, ask for additional time if  
25 the bank would agree to yet another request from your side

1 from an extension.

2 MR. CHOUDHURI: Objection, nonresponsive.

3 THE COURT: I'll overrule the objection.

4 BY MR. CHOUDHURI:

5 Q So when you say the settlement agreement doesn't exist  
6 as of June 12, 2023, what do you mean by that?

7 A The time for performance of the settlement agreement,  
8 as Mr. Wetwiska testified earlier, which shouldn't be in  
9 dispute, is March 20, 2023. There were 210 days that the  
10 settlement agreement provided for performance. It did not  
11 perform. It was on you and or whoever on behalf of your  
12 team (indiscernible) did not perform within that date. And  
13 so when we say from the existence, there is no additional  
14 time for performance. We objected on behalf of the National  
15 Bank of Kuwait in the state court's ruling extending the  
16 time for performance. We are -- but if you're asking me  
17 what the existence of this non-existence is, there are no  
18 rights on behalf of the debtor, Galleria 2425 Owner, LLC to  
19 enforce the terms of the settlement agreement. The only  
20 rights are for the bank as a result of the default.

21 MR. CHOUDHURI: Your Honor, nonresponsive.

22 THE COURT: I think he's being responsive. You  
23 just don't like his response, unfortunately. But he's  
24 responsive. I'll overrule the objection.

25 BY MR. CHOUDHURI:

1 Q Mr. Conrad, wouldn't be care to say there is a dispute  
2 over the settlement agreement?

3 A No.

4 Q There's no dispute over the settlement agreement?

5 A The dispute maybe is that you don't maintain that  
6 you're in default, which you clearly are.

7 Q So there's no dispute that the bank committed the first  
8 material breach or fraud in the inducement in entering into  
9 the settlement agreement?

10 A That I disagree with. There's absolutely no evidence  
11 to support any claim based on your claim for breach of  
12 contract of the settlement agreement. There's nothing.

13 Q That's according to you, but there's two sides to it.  
14 Are you aware that Paul Caldwell made an offer for \$75  
15 million for the building?

16 A No.

17 Q Are you aware that he made any offer?

18 A I don't know. No, I'm not aware. Because of that  
19 document was prepared by one of your lawyers, Seth  
20 Nichamoff, who appeared at the state court proceeding, it  
21 has an electronic signature on behalf of Mr. Caldwell. I  
22 don't know what that is. It's a document that you did not  
23 produce, you did not attach to any of your complaints or  
24 original complaints in the state court litigation. It  
25 wasn't until much later that I first saw that document. But

1     again, I don't know what that is, other than it's  
2     purportedly something that you contend is an offer.

3     Q     So the Bank of Kuwait has a claim here, and this is the  
4     -- this court or this bankruptcy case is where they're  
5     attempting to pursue the amount that they contend their  
6     owed, right?

7     A     Yes.

8     Q     Anywhere else?

9     A     That action, I think, I believe has been removed. That  
10    was then the adversary proceeding. There was a counterclaim  
11    asserted against the debtor in the state court litigation.

12    Q     So outside of this court, in Judge Norman's case, the  
13    only other place that the Bank of Kuwait is pursuing money  
14    related to the note is in the adversary that was removed or  
15    the state court case that was removed?

16    A     I'm not sure about that, but I don't think so. I'm not  
17    certain about that.

18    Q     Is there any avenue or any source or pursuit of claims  
19    that the Bank of Kuwait is pursuing outside of Judge  
20    Norman's court or Harris County district court?

21                 MR. FITZMAURICE: Objection. Mr. Conrad clearly  
22    doesn't need my help, as Your Honor can see. But this is  
23    not relevant to the issue of whether the bank can credit bid  
24    at the auction tomorrow.

25                 THE COURT: I'll sustaining the objection as to

1 relevance. Thank you.

2 MR. CHOUDHURI: I just want to understand there's  
3 no other -- I'm almost there, Your Honor. I really have to  
4 know this --

5 THE COURT: It's not relevant to credit bidding,  
6 so he doesn't have to answer it. Thank you. Move on.

7 BY MR. CHOUDHURI:

8 Q Has the Bank of Kuwait filed a lawsuit in New York for  
9 \$70 million to pursue its claims under the settlement or  
10 under the note, the deed of trust?

11 A There is a lawsuit that's pursuant to the guarantee  
12 that was against Brad Parker in New York. That has been  
13 filed.

14 Q Has that been disclosed to this court?

15 A I'm not aware (indiscernible).

16 Q Was it in any kind of disclosure? So you're not aware.

17 MR. FITZMAURICE: So Your Honor, relevance to  
18 credit bidding.

19 THE COURT: I'm struggling with relevance, Mr.  
20 Choudhri.

21 MR. CHOUDHURI: Your Honor, It's a lack of  
22 disclosure. They're pursuing -- they're talking both sides.  
23 They're saying the settlement agreement, the releases are  
24 good. We can't talk beyond that. But yet they're suing the  
25 guarantors that they've released the guarantors.

1                   THE COURT: I'll sustain the objection. Thank  
2     you. Move on.

3     BY MR. CHOUDHURI:

4     Q     Have you ever have any communication with Security  
5     State Bank of Texas.

6     A     I don't recall having any direct communications with  
7     them.

8     Q     Are you aware that they were a lender to take out the  
9     loan that NBK agreed to sign under the settlement agreement?

10    A     I'm aware that Mr. Wetwiska represented that as such,  
11    but I don't have any personal knowledge of that.

12    Q     Do you recall asking Mr. Wetwiska and Gene Meyers at  
13    Security State Bank that if they were big enough to make  
14    this loan?

15           MR. FITZMAURICE: Objection, Your Honor, relevance  
16    to the credit bidding.

17           MR. CHOUDHURI: It's, Your Honor -- it goes to the  
18    prevention of the debtor, myself, taking out the financing  
19    and interfering with this process. It goes to good faith.

20           THE COURT: I'll allow the question. Go ahead.

21           THE WITNESS: Will you ask the question again.  
22    I'm sorry.

23    BY MR. CHOUDHURI:

24    Q     Do you recall having conversations with Gene Meyers  
25    regarding 2425?

1 A If you scroll back up to the screen at the top of the  
2 email chain, I remember exactly what Mr. Meyers tells me  
3 being the case. I remember that you and/or met with Mr.  
4 Wetwiska asked him to reach out to me, not the other way  
5 around. And so --

6 Q (indiscernible)

7 A -- he states here, he says, Mr. Conrad, good afternoon.  
8 Ali had requested an update on this loan request and  
9 (indiscernible) --

10 MR. CHOUDHURI: Objection (indiscernible) --

11 THE WITNESS: -- share with you, so it was given  
12 to me.

13 MR. FITZMAURICE: So Your Honor, I also object the  
14 use of this document. It's not clear that it's on any list.

15 THE COURT: It's not in evidence at this point in  
16 time. So go ahead.

17 BY MR. CHOUDHURI:

18 Q And I put it on here because you said there's no  
19 communications that you've (indiscernible) --

20 A That is not how I understood your question.

21 Q Are you aware of offers received by the Bank of Kuwait  
22 since the filing of this case?

23 A What do you mean by offers?

24 Q Offers to buy the note or buy the property.

25 MR. FITZMAURICE: So objection, Your Honor, the

1 bank can't sell the property. But also what's the relevance  
2 to the credit bidding?

3 THE COURT: Sustain the objection as to relevance.

4 BY MR. CHOUDHURI:

5 Q Has the bank received any offers to sell its note?

6 MR. FITZMAURICE: Same objection, Your Honor.

7 THE COURT: I'll sustain the objection as to  
8 relevance.

9 BY MR. CHOUDHURI:

10 Q Under the settlement agreement, once the bank gets paid  
11 \$26 million, what happens to the tax liens that it holds?

12 A Well again, this goes back to assuming that it was paid  
13 within the 210 days originally and then extended by the  
14 state court judge on or before July 3rd, which never  
15 happened. So I don't know that I need to answer that  
16 question because all of that time has expired and so those  
17 tax liens were assigned to the bank and there is a default  
18 by you of the settlement agreement.

19 Q Is the bank's position to settlement agreement is  
20 rescinded or still valid?

21 MR. FITZMAURICE: Objection, Your Honor,  
22 relevance.

23 THE COURT: I'll sustain the objection. It's not  
24 relevant to credit bidding. Thank you.

25 BY MR. CHOUDHURI:



1 Q Did anybody from the bank tell potential buyers of the  
2 property that the property was going to be foreclosed in the  
3 near future?

4 MR. FITZMAURICE: Objection, Your Honor, vague as  
5 to time.

6 BY MR. CHOUDHURI:

7 Q 2023.

8 THE COURT: Overruled.

9 THE WITNESS: So going back to March 20th of 2023,  
10 there was no payment made. There was a default letter  
11 issued approximately seven --

12 MR. CHOUDHURI: Objection (indiscernible) --

13 THE COURT: You asked the question. He can answer  
14 it. Go ahead.

15 THE WITNESS: know what your question is asking,  
16 so I'm going to answer it. And so after a week of following  
17 no performance of March 20th, we issued a notice of  
18 foreclosure for the May 6th, whatever the first Tuesday was,  
19 in May 6, 2023. Subsequent to that, we filed a motion to  
20 appoint a receiver to the property. Shortly before the oral  
21 hearing of a motion to appoint receiver, you filed yet  
22 another lawsuit claiming breach of the settlement agreement  
23 regarding the Paul Caldwell issue. At that hearing on April  
24 12th, the court then entered into that order extending the  
25 time for performance of the settlement agreement until July

1 3rd. At that point in time, you've now made the argument  
2 that the time for performance of the settlement agreement  
3 was in existence from March 20th to April 12th. And you  
4 claimed that our notice, which we placed publicly, which we  
5 were entitled to do under the settlement agreement,  
6 constituted telling people that we were going to foreclose  
7 on the property, which I think is entirely what we're  
8 entitled to do.

9 BY MR. CHOUDHURI:

10 Q So I think we're conflating things. I just want to  
11 make sure the question -- your answer is accurate. The  
12 state court enjoined you from going forward and foreclosing  
13 on the property in 2023, correct?

14 A On May 6th.

15 Q And you were volleying phone calls from the buyers,  
16 potential buyers who were contacting your agent, the  
17 trustee, correct? I can pull the emails. Maybe it's  
18 easier.

19 A I don't know what you mean by trustee, but at this  
20 timeframe --

21 Q There's a substitute trustee that is listed on your  
22 foreclosure notice, right?

23 A Yes.

24 Q And that substitute trustee has to post the property 21  
25 days before the first Tuesday of the month, right?

1 A Correct.

2 Q And when the court tells NBK they must pass their sale  
3 and not go forward with it, or the court tells NBK to not go  
4 forward with their sale, correct?

5 A Still understand what you're talking about. Which  
6 sale?

7 Q The property was posted for foreclosure in 2023.

8 A Several times.

9 Q In May or June?

10 A Not June.

11 Q So when it was posted, it was posted in May then?

12 A As I was stating earlier, from the time period of March  
13 20th, when the time for performance ended then after the  
14 default notice was issued, a notice of foreclosure was  
15 issued, I believe, and I'm going to estimate here, around  
16 March 26th, 27th, something like that. It's in that  
17 timeframe, and that it wasn't until after April 12th that  
18 there was a hearing where you were requesting a temporary  
19 restraining order, and the court ultimately decided to  
20 extend the time for performance, take down our notice of  
21 foreclosure but recognizing that the bank had the right to  
22 reissue the notice of foreclosure for a July 3rd, excuse me,  
23 July 5th foreclosure bid, which we did, and the court  
24 specifically authorized us to issue that notice for the July  
25 5th setting. And that --

1 Q My question --

2 A Go ahead.

3 Q Yeah. My question is, and I can pull it up just in a  
4 second, this. My question is this, Mr. Conrad. When the  
5 court enjoined you from foreclosing and the Bank of Kuwait  
6 was getting phone calls after the sale had been passed, the  
7 sale had been passed for May, correct?

8 A Yes, that's directed by the court.

9 Q And once that had happened and the Bank of Kuwait was  
10 getting phone calls, there was communication that I've seen,  
11 and I'll put it on here, where the Bank of Kuwait was  
12 telling the potential bidders that we're going to foreclose  
13 in the future, we're going to post in the future. Do you  
14 recall that?

15 A Not exactly how you stated.

16 Q How do you recall what was said in those  
17 communications, and I'll pull them up in a second.

18 MR. FITZMAURICE: Your Honor, maybe that's the  
19 best thing for us to do rather than --

20 THE COURT: Sure.

21 BY MR. CHOUDHURI:

22 Q I want to go back to one thing. You said you never  
23 spoke to Mr. Caldwell, right?

24 A I don't recall ever speaking to him.

25 Q Mr. Conrad, is your email charles.conrad@pillsbury?

1 A It is.

2 Q Is this an email on February the 2, 2023, that you  
3 received from Paul Caldwell?

4 A If you'll scroll down?

5 Q It says, Mr. Conrad, we spoke briefly last week  
6 regarding my firm's interest in acquiring a note from the  
7 Bank of Kuwait. I believe the bank holds the senior secured  
8 position. I'd like to have a discussion with the bank  
9 concerning acquisition. Thanks for your consideration.

10 A Sorry. What was the question?

11 Q Earlier you testified you never spoke to Mr. Caldwell,  
12 right?

13 MR. FITZMAURICE: Objection, Your Honor,  
14 mischaracterizes the witness' testimony.

15 THE COURT: I'll sustain the objection.

16 BY MR. CHOUDHURI:

17 Q Does this refresh your recollection, Mr. Conrad?

18 A No.

19 Q So did you speak to Mr. Caldwell after looking at the  
20 email?

21 A I don't have any recollection of speaking with him, my  
22 memory as of today. I remember trying to schedule a call  
23 with him. I remember, I believe potentially, but I think  
24 everything was with his assistant, Jennifer Garcia, or  
25 whoever her name was or his name.

1 Q Who is Hugh Ray? Is he with your firm?

2 A Which Hugh Ray?

3 Q Pillsbury.

4 A Yes, there is a Hugh Ray that works at Pillsbury.

5 Q And you're not aware if Mr. Caldwell is a client of  
6 Pillsbury or not?

7 MR. FITZMAURICE: Objection, Your Honor, asked  
8 unanswered. Relevance. Now we're going to cast aspersions  
9 on some other person who's not here?

10 THE COURT: What's the relevance?

11 MR. CHOUDHURI: Your Honor, the relevance is it  
12 goes to the information, the contracts with Mr. Caldwell and  
13 the bank saying they didn't get things that they did get, or  
14 communications. And it circles back to offers and leases  
15 that were sent to the bank that they claim they never got.  
16 And it's just --

17 MR. FITZMAURICE: Your Honor, there's no proof of  
18 any of that that's been offered.

19 THE COURT: I'll sustain the objection. Thank  
20 you.

21 BY MR. CHOUDHURI:

22 Q Are you aware of Bruce Merwin? Do you know who Bruce  
23 Merwin is?

24 A No.

25 Q Do you know who Holland & Knight is?

1 A Yes.

2 Q Did anybody from your firm relating to this transaction  
3 receive leases and proposals and sales contracts from  
4 Holland & Knight?

5 MR. FITZMAURICE: Objection, Your Honor, relevance  
6 to the bank's ability to credit bid at the auction tomorrow.

7 THE COURT: Again, what's your relevance?

8 MR. CHOUDHURI: Your Honor, if they have been  
9 acting in bad faith and thwarting the efforts of myself, the  
10 debtor, and not frustrating performance, then I think that  
11 goes to good faith. It goes to their bad faith and  
12 interfering so they can create a situation where they can  
13 credit bid. They should not be rewarded. The reason the  
14 debtor is in bankruptcy --

15 THE COURT: I'm going to sustain the objection.  
16 Thank you. Go ahead.

17 BY MR. BURKS:

18 Q Are you aware that -- this is Exhibit 18?

19 MR. FITZMAURICE: I apologize. Can we get an ECF  
20 number for that? Exhibit 18 to what?

21 MR. CHOUDHURI: 499-18.

22 THE WITNESS: Sorry. What was the question?

23 MR. CHOUDHURI: I'd like to go back for a second,  
24 Your Honor, if it's okay. Could I move to admit this email  
25 from Paul Caldwell to Charles Conrad?

1 MR. FITZMAURICE: So objection, Your Honor, on  
2 authenticity grounds. We have no way to know if that's Mr.  
3 Paul Caldwell's email, if this was actually sent by him.  
4 There's no foundation for that. We have no basis --

5 THE COURT: I'll let you try and lay a foundation.  
6 But I'm going to sustain the objection.

7 BY MR. CHOUDHURI:

8 Q Mr. Conrad, do you recognize your email address on this  
9 document, Document 498-6, Page 3 of 3?

10 A Yes.

11 MR. CHOUDHURI: I move to admit this email.

12 MR. FITZMAURICE: Same objection, Your Honor.

13 THE COURT: I don't think that gets you there. In  
14 fact, I know it doesn't get you there. You've got to do  
15 something else.

16 BY MR. CHOUDHURI:

17 Q Did you receive this email, Mr. Conrad?

18 A Again, I don't remember. I did have emails with Mr.  
19 Caldwell's assistant about scheduling something, but I don't  
20 recall this one, just by looking at it.

21 Q Mr. Conrad, you're aware that there was a discovery  
22 request made for communications between the Bank of Kuwait  
23 and Mr. Caldwell?

24 MR. FITZMAURICE: Objection, Your Honor. In what  
25 case? In what context? At what time?



1 MR. CHOUDHURI: In this case, on the 30(b)(6).

2 MR. FITZMAURICE: Well, if that's true, Your  
3 Honor, then there's a document that would show that.

4 THE COURT: Yes. So if you've got something, show  
5 it to me. Thank you.

6 MR. CHOUDHURI: I would like to bring the court to  
7 judicially recognize there's a motion for contempt filed in  
8 this case, Your Honor. I'd like you to have that document.  
9 That has an attachment of the notice of the 30(b)(6) with  
10 the communications. But I can come back to these questions  
11 (indiscernible).

12 BY MR. CHOUDHURI:

13 Q Mr. Conrad, are you aware that Paul Caldwell signed a  
14 CA and an NDA with Ali Choudhri?

15 A No.

16 Q Mr. Conrad, have you seen this document before?

17 A Yes.

18 MR. CHOUDHURI: I'd like to move to admit this  
19 document, Your Honor.

20 MR. FITZMAURICE: Your Honor, objection as to lack  
21 of foundation and authenticity. There's what appears to be  
22 a typed in and script name Paul Caldwell, but there's no  
23 indication as to whether or not he actually signed it, how  
24 that signature got there, where it came from, or anything  
25 else that would be needed to show the authenticity of the

1 document.

2 THE COURT: I'll sustain the objection as to lack  
3 of foundation.

4 BY MR. CHOUDHURI:

5 Q So you said you've seen this document. Do you recall  
6 when you've seen it?

7 A Yes. It's one of your exhibits that you're trying --  
8 that you listed as an exhibit that you might use. That's  
9 how I saw it.

10 Q And can you read what --

11 THE COURT: It's not in evidence. He can't read  
12 from it.

13 BY MR. CHOUDHURI:

14 Q Mr. Conrad, do you have the information relating to  
15 leases or contracts or offers -- do you have any knowledge  
16 of any offers or leases that the Bank of Kuwait received?

17 MR. FITZMAURICE: So Your Honor, we'll ignore the  
18 compound portion of that, but relevance to the issues.

19 THE COURT: Mr. Choudhri, what's the relevance?

20 MR. CHOUDHURI: Bad faith. Suppression of value  
21 to come and benefit from a credit bid. That they should be  
22 rewarded for their actions of --

23 THE COURT: I'll sustain the objection. Thank  
24 you.

25 BY MR. CHOUDHURI:

- 1 Q Do you know who Keith Maxwell is, Mr. Conrad?
- 2 A No.
- 3 Q Newdevco?
- 4 A No.
- 5 Q You know who Bobby Salah is?
- 6 A I do not.
- 7 Q Or Lawrence Perry?
- 8 A I'm sorry. What was the last name?
- 9 Q Lawrence Perry.
- 10 A I don't know.
- 11 Q Do you recall participating in the mediation of Edina
- 12 Marshall?
- 13 A Yes.
- 14 Q And at that mediation, do you recall this was at the
- 15 end of June 2023. Is that accurate?
- 16 MR. FITZMAURICE: The timing of the mediation is
- 17 whatever it is, but relevance to the issues --
- 18 THE COURT: Again, relevance.
- 19 MR. CHOUDHURI: It's to consummate the transaction
- 20 that has been being attempted to consummate where the bank
- 21 has interfered with that consummation.
- 22 THE COURT: I'm going to sustain the objection as
- 23 to relevance. Thank you.
- 24 BY MR. CHOUDHURI:
- 25 Q Mr. Jeffrey Gilman.

1 A Jeffrey Gilman is an attorney in Houston.

2 Q Is he the trustee and attorney for National Bank of  
3 Kuwait?

4 A He was a substitute trustee.

5 Q Are you aware that he told third parties that there  
6 would be a foreclosure in the future?

7 MR. FITZMAURICE: So objection, Your Honor,  
8 hearsay. But also if there's a document that says that,  
9 let's take a look at it.

10 THE COURT: I'll sustain the objection as to  
11 hearsay.

12 BY MR. CHOUDHURI:

13 Q Did you receive an email from -- was there a dispute  
14 between the Bank of Kuwait and the debtor as it related to  
15 posting of the property?

16 A I don't understand the question.

17 Q Was there any dispute between NBK and the borrower in  
18 relation to the posting of the property for foreclosure?

19 A I still don't understand. I mean, you're asking me to  
20 tell you whether or not you thought that there was a dispute  
21 because the bank moved to foreclose the property to enforce  
22 its right under the loan agreement and the loan documents.  
23 Did the borrower, now debtor, try to contest it at every  
24 single which way, basically six ways from Sunday? Yes. To  
25 delay that process? Yes. So does that answer your

1 question? That's the best I understand it.

2 Q Was there a dispute between you and Jim Wetwiska, as it  
3 relates to the court's ruling for the posting of the  
4 foreclosure?

5 MR. FITZMAURICE: Your Honor, objection. I think  
6 this is a version of the same question. So it's been asked  
7 and answered. It's also not relevant to whether the bank  
8 can credit bid.

9 THE COURT: I'll sustain the objection as to  
10 relevance.

11 BY MR. CHOUDHURI:

12 Q If the bank is successful as a credit bidder, what is  
13 it acquiring at the sale? The real estate and anything  
14 else, or just the real estate?

15 MR. FITZMAURICE: Objection, Your Honor. The bid  
16 procedure in the stalking horse agreement, they all speak  
17 for themselves as to what is being sold in the auction.

18 THE COURT: I'll sustain the objection. Thank  
19 you.

20 BY MR. CHOUDHURI:

21 Q Do you have any knowledge of who or what entity owns  
22 the FF&E in the building?

23 A I'd have to go back and look at the loan agreement and  
24 the loan documents. I don't know the answer.

25 Q Are you aware that Stage Stores had filed bankruptcy?

1 A Yes.

2 Q And are you aware that they have sold all of the FF&E  
3 in the building?

4 MR. FITZMAURICE: Objection, Your Honor, relevance  
5 to the credit bidding.

6 THE COURT: I'll sustain the objection. It's not  
7 relevant to credit bidding.

8 BY MR. CHOUDHURI:

9 Q Is the bank's expectation on a credit bid that they're  
10 obtaining the FF&E in the building?

11 MR. FITZMAURICE: Your Honor, it's the same  
12 question as before.

13 THE COURT: It's not relevant. Move on. Thank  
14 you.

15 BY MR. CHOUDHURI:

16 Q Is this an email you received, Mr. Conrad, from Jim  
17 Wetwiska on May the 4th, 2023?

18 A I don't know. It could be.

19 Q Is this your email address on here?

20 A Yes.

21 MR. CHOUDHURI: I'd like to move to enter this  
22 document, Your Honor.

23 THE COURT: What's the ECF number?

24 MR. CHOUDHURI: I don't have the ECF number on me.  
25 It goes to his earlier statements that --

1 THE COURT: It has to be an ECF in order to be  
2 admitted. If it's not on ECF, I can't admit it because  
3 everything's electronic.

4 BY MR. CHOUDHURI:

5 Q Mr. Conrad, can you confirm this is an email you  
6 received?

7 MR. FITZMAURICE: So that question's been asked  
8 and answered, Your Honor.

9 THE COURT: I'll sustain the objection.

10 MR. CHOUDHURI: May I ask him questions about the  
11 email?

12 THE COURT: Sure. I'm just saying I can't admit  
13 it because it's not on ECF.

14 BY MR. CHOUDHURI:

15 Q What is the date of this email?

16 A It purports to be May 4, 2023.

17 Q What time?

18 A 2:51 p.m.

19 Q Would you read the first paragraph, please?

20 MR. FITZMAURICE: Your Honor, the email is not in  
21 evidence. Having Mr. Conrad read it is a way to --

22 THE COURT: The only reason it's not in evidence  
23 is because I can't admit it. I'll let him -- I don't have  
24 any problem with him testifying. I'm not sure what it's  
25 relevant to at this point in time. But go ahead, answer the

1 question.

2 THE WITNESS: Can you scroll down to the email,  
3 the rest of the chain? Stop. Go back to mine. Skip that  
4 over it again.

5 THE COURT: Go one up.

6 THE WITNESS: Yeah. I need to read the whole  
7 chain.

8 THE COURT: Right there. Stop there.

9 THE WITNESS: All right. If you could scroll down  
10 a little bit. Yeah.

11 BY MR. CHOUDHURI:

12 Q So the state court, and I can pull up the transcript,  
13 but do you recall Judge Weems in the state court telling  
14 you, you should not be telling people calling you that  
15 you're going to post in the future?

16 A At the beginning, where this email chain starts from is  
17 that there was a bond requirement by the state court judge  
18 for you to pay \$80,000 per month. There was a question that  
19 we asked for purposes of securing performance of that  
20 \$80,000 a month and whether or not we would post, could  
21 post. And there was a disagreement by Mr. Wetwiska of  
22 saying that. And that was later discussed in a status  
23 conference with the court saying, look, if they make the  
24 \$80,000 payments up until July 3rd, you cannot post. But up  
25 until July -- excuse me, until June, you can post for the



1 July 5th setting, which is what she ordered. So there was  
2 clarity of saying, look, as long as they're making the  
3 \$80,000 payments, which you did from April and May, but not  
4 June, you could post, you could not post. So that's what I  
5 recall.

6 Q But so the issue was telling the bidders, the potential  
7 bidders, once the judge said you could not post and you had  
8 to pass the sale and allow the bidder to perform, NBK's  
9 agents continued to tell the bidders that there will be a  
10 posting in the future, true or false?

11 MR. FITZMAURICE: Objection, Your Honor, assumes  
12 facts not in evidence.

13 THE COURT: I'll sustain the objection. Thank  
14 you.

15 BY MR. CHOUDHURI:

16 Q Do you know who Osama Abdullatif is?

17 A No.

18 Q Do you know who Rodney Drinnon is?

19 A I know who he is, yes.

20 Q You've had conversations with him?

21 A I don't recall any other than kind of he was at  
22 hearings where I was present, but I don't recall any other  
23 conversations that I've had with him, other than at court  
24 hearings.

25 Q Are you aware of how this loan came to be and how the

1 structure was organized?

2 MR. FITZMAURICE: Objection, Your Honor, relevance  
3 to the credit budding.

4 THE COURT: I don't even know what loan we're  
5 talking about. So, but I'll sustain the objection.

6 BY MR. CHOUDHURI:

7 Q Mr. Conrad, how will the bank be impaired in any way if  
8 it's not allowed to credit bit?

9 MR. FITZMAURICE: Objection, Your Honor. That's  
10 not a relevant issue for whether or not the bank  
11 (indiscernible) --

12 THE COURT: I'll sustain the objection. Thank  
13 you.

14 BY MR. CHOUDHURI:

15 Q So Mr. Conrad, whatever representations were made by  
16 both sides in varying courts, whether it's by NBK or by  
17 debtor or myself, you would stand by those as far as if any  
18 representations were made by two courts? Again, we don't  
19 have all the transcripts here today, but if the  
20 representation is made by NBK to varying courts, you would  
21 stand by those are we sit here today.

22 MR. FITZMAURICE: So I'm going to object to the  
23 question, Your Honor, as I understand that he's asking if  
24 there is evidence that's not before the court, that's not  
25 part of the record of this hearing. I don't know what

1 relevance it has to the hearing. There are exhibits that  
2 are being offered here into evidence or not. That's what  
3 we're here focused on. So objection on that.

4 THE COURT: I'll sustain the objection. Ask  
5 another question, please.

6 BY MR. CHOUDHURI:

7 Q Mr. Conrad, you participated in the drafting of the  
8 settlement agreement, true?

9 A Yes.

10 Q So you made your edits and changes in redlines and back  
11 and forth with Mr. Wetwiska, right?

12 A Among others. Yes.

13 Q Who was the others?

14 A Nick Houpt was an associate of Mr. Wetwiska  
15 (indiscernible).

16 Q So as we sit here today, are the releases effective in  
17 the settlement agreement?

18 MR. FITZMAURICE: Your Honor, objection. I know  
19 that Mr. Conrad has a view as to the legal answer to that  
20 question, but it calls for a legal conclusion which is for  
21 Your Honor. And also it's not relevant for purposes --

22 THE COURT: I'll sustain the objection as to  
23 relevance.

24 BY MR. CHOUDHURI:

25 Q Mr. Conrad, we're not here today to try this case as it

1 relates to the dispute with the debtor, Ali Choudhri and the  
2 Bank of Kuwait, right?

3 A I don't know how to answer that question. I don't know  
4 what you are thinking.

5 Q You believe today is going to lead to an adjudication  
6 of the dispute between the Bank of Kuwait and the debtor and  
7 Ali Choudhri?

8 MR. FITZMAURICE: Objection, Your Honor. We're  
9 here on the motion to preclude the bank from credit bidding.

10 THE COURT: I'll sustain the objection. I know  
11 why we're here. Why he thinks we're here, again, I don't  
12 really care. And again, I'm going to tell you to move along  
13 because we now have reached a point where I have given you a  
14 lot of leeway. But we're not getting very far.

15 BY MR. CHOUDHURI:

16 Q Within a couple of weeks of the trustee being appointed  
17 -- let me back up. When was the first meeting the Bank of  
18 Kuwait had with the trustee or its representatives?

19 A I don't remember.

20 Q When did the Bank of Kuwait want JLL to take over  
21 management?

22 MR. FITZMAURICE: Objection, Your Honor, assumes  
23 facts not in evidence.

24 THE COURT: I'll sustain the objection. Thank  
25 you.

1 BY MR. CHOUDHURI:

2 Q Did you have conversations with counsel for Sonder?

3 MR. FITZMAURICE: Objection, Your Honor, relevance  
4 to credit bidding.

5 THE COURT: I'll sustain the objection as to  
6 relevance.

7 Again, Mr. Choudhri, you've got a couple more  
8 questions. Let's make them worth your time and Mr. Conrad's  
9 effort.

10 BY MR. CHOUDHURI:

11 Q Does the bank have an agreement with the trustee to pay  
12 the admin expenses, whatever they are?

13 MR. FITZMAURICE: Your Honor, is Mr. Choudhri  
14 asking other than the provisions of the plan which could be  
15 read in that way?

16 THE COURT: I'm not sure what he's asking. I'll  
17 let him rephrase the question.

18 BY MR. CHOUDHURI:

19 Q As we sit here today, the plan is not confirmed, right?

20 A Correct.

21 Q And the plan has a lot of contingencies, correct?

22 A I don't know. You have to be more specific.

23 Q Is there -- is the plan or any agreement with the  
24 trustee conditioned on allowing the bank to credit bid?

25 MR. FITZMAURICE: So objection, Your Honor, the

1 plan speaks for itself. But we're also here on credit  
2 bidding, not confirmation.

3 THE COURT: I'll sustain the objection.

4 BY MR. CHOUDHURI:

5 Q Did the trustee tell or communicate or the trustee's  
6 representative communicate with you that not having a capped  
7 credit bid worth bidders at an auction?

8 A So your question is whether or not not having a cap  
9 would effect? I remember the request being made about  
10 whether or not we would consider not having a -- or whether  
11 or not the bank would consider having a cap on its credit  
12 bid. I remember that request being made, or inquiry.

13 Q And the bank's position is that's non-negotiable?

14 MR. FITZMAURICE: Objection, Your Honor, non-  
15 negotiable. Assumes facts not in evidence.

16 THE COURT: I'll sustain the objection.

17 BY MR. CHOUDHURI:

18 Q Is there any limit that the bank is putting on the  
19 trustee or the estate for admin expenses?

20 MR. FITZMAURICE: Objection, relevance.

21 THE COURT: I'll sustain the objection.

22 Mr. Choudhri, I've been, I think, more than  
23 lenient. I've warned you over and over and over again. You  
24 are done with this witness. Please sit down. And I'm going  
25 to encourage you to ask questions on any other witnesses

1     that you want to call that are relevant to what I'm about to  
2     rule on because my patience is very much wearing thin. All  
3     right. You're done. Thank you.

4             Let me go ahead and go to Mr. Burks first because  
5     he's basically on the same side.

6             MR. BURKS: No questions from this witness.

7             MR. FITZMAURICE: Sorry, Charles. Very briefly.

8             THE COURT: Okay. You're opening the door.

9             MR. FITZMAURICE: Your Honor, the agreement says  
10    what it says. No questions.

11            THE COURT: All right. Thank you. You may step  
12    down. Thank you, sir.

13            Mr. Choudhri, Mr. Phillips is on the line. Do you  
14    want to call him? Yes, I'm assuming?

15            MR. CHOUDHURI: Yes, Your Honor.

16            THE COURT: Okay. Then hold on for one second.  
17    Let me make sure he's unmuted.

18            MR. PHILLIPS: My computer screen says I'm muted.  
19    Muted?

20            THE COURT: Well, that's been because you're on a  
21    phone line. So that's different, Mr. Phillips. But if we  
22    can hear you, and you can hear us, that's all that matters.  
23    Please raise your right hand to be sworn. Do you swear or  
24    affirm to tell the truth, the whole truth and nothing but  
25    the truth, so help you God?

1 MR. PHILLIPS: I do.

2 THE COURT: All right. Go ahead, sir.

3 DIRECT EXAMINATION OF THOMAS PHILLIPS

4 BY MR. CHOUDHURI:

5 Q Hello, Mr. Phillips. How are you?

6 A I'm good.

7 Q Will you describe your profession and your background a  
8 little bit for the court here?

9 A I suspect the court knows, but I'm an attorney of  
10 almost 50 years' practice (indiscernible) a partner at Baker  
11 Botts law firm and served in the judiciary several decades  
12 ago.

13 Q Mr. Phillips, were you on the Supreme Court of Texas?

14 A Yes.

15 Q Were you the chief justice of the Supreme Court?

16 A Yes.

17 Q And approximately how long have you been representing  
18 me or affiliated entities?

19 A In one fashion, in one manner or another, perhaps six  
20 or seven years.

21 Q Do you recall the case with Judge Kerrigan?

22 A Yes.

23 Q And you represented me in the divorce case?

24 A Yes, a time in the trial court.

25 Q Mr. Phillips, you have -- you are representing several



1 entities -- well, let me back up. Baker Botts has approved  
2 a contingency -- can you describe this? Has Baker Botts  
3 approved a contingency or what is the process to approve  
4 contingency arrangements at Baker Botts?

5 MR. FITZMAURICE: So objection, Your Honor, there  
6 were several questions.

7 THE WITNESS: Our --

8 MR. FITZMAURICE: If --

9 THE COURT: Mr. Phillips, hold on one second. I  
10 got an objection. I need a rule on that objection.

11 MR. FITZMAURICE: So if the question that's being  
12 asked is the last question, which is the process at Baker  
13 Botts for approving a contingency --

14 MR. CHOUDHURI: Yes.

15 MR. FITZMAURICE: -- then we object on relevance  
16 grounds. If it's any of the prior questions, we still  
17 object on relevance grounds. But also to the extent that  
18 there is some agreement in place, then that is the best  
19 evidence of its terms and we should look at that.

20 THE COURT: All right. Mr. Burks?

21 MR. BURKS: So my response here is that what Mr.  
22 Choudhri is trying to establish the scope and the validity  
23 of causes of action. And I think if we let the two speak, I  
24 think we can get through this quickly and it is relevant in  
25 terms of establishing the -- whether or not there's a

1 material dispute to be resolved, Judge. I mean, that's what  
2 the case law says.

3 THE COURT: I'll sustain the objection as to the  
4 Baker Botts process as not relevant.

5 Mr. Choudhri, ask your question again. Be  
6 specific so I know exactly what you're talking about and  
7 we'll go from there.

8 BY MR. CHOUDHURI:

9 Q Mr. Phillips, did Baker Botts approve the contingency,  
10 the arrangement with Galleria 2425 Owner, LLC?

11 MR. FITZMAURICE: So objection, Your Honor,  
12 leading and also vague as to time.

13 THE COURT: Be more specific as to what  
14 litigation, when, where, how, Mr. Choudhri.

15 BY MR. CHOUDHURI:

16 Q Mr. Phillips, as it relates to Sonder, holdings of  
17 Sonder USA, are you familiar with that entity?

18 MR. FITZMAURICE: So Your Honor, objection, Sonder  
19 has nothing to do with whether or not the bank can credit  
20 bid at the auction. And if the Baker Botts contingency fee  
21 arrangement as relates to claims against Sonder, that has no  
22 relevance to the bank's ability to credit bid.

23 THE COURT: I'll let you go as to relevance. I  
24 mean, I understand you bought those claims. I understand  
25 you have a right to sue them. But I'm not sure what it has

1 to do with credit bidding.

2 MR. CHOUDHURI: Your Honor, it has to do with some  
3 communications I can share as it relates to the Bank of  
4 Kuwait controlling if those claims are deeming sold and  
5 having and exercising control over the trustee throughout  
6 the process to make an agreement to make sure they can  
7 credit bid (indiscernible) supported doing so, rather than  
8 monetizing the claims for the estate, that would actually  
9 help (indiscernible) --

10 THE COURT: Okay. So let me get this right. You  
11 want to argue that the fact that you won and you bought the  
12 claims now is unfair to some other parties. That makes no  
13 sense to me. You got what you wanted, right? You bought  
14 the claims. And you're going after Sonder, right?

15 MR. CHOUDHURI: From what is best, in my opinion,  
16 for all the creditor in the estate is where I was going  
17 (indiscernible) --

18 THE COURT: I'll sustain the objection as to  
19 relevance. Thank you.

20 BY MR. CHOUDHURI:

21 Q Mr. Phillips, did you have communications or  
22 conversations with the trustee or R.J. or its attorneys  
23 relating to Baker Botts' representation of the debtor?

24 MR. FITZMAURICE: Objection, as it relates to the  
25 bank or as relates to Sonder?

1 THE COURT: As it relates to whom?

2 MR. CHOUDHURI: To Sonder.

3 THE COURT: I don't think anything that has to do  
4 with Sonder has any relevance to the motion that's before  
5 me. So if those are the questions that you're going to ask  
6 Mr. Phillips, you bought the claims. Mr. Phillips can  
7 pursue them for you or for one of your entities, because I  
8 think it was bought by one of your entities. It has no  
9 relevance to the motion that's before me. So let's get this  
10 done quickly. Are you going to ask him anything other than  
11 about Sonder claims?

12 MR. CHOUDHURI: I'll move this along.

13 THE COURT: Well, no, I'm asking a specific  
14 question.

15 MR. CHOUDHURI: I'm getting ready to pass the  
16 witness, Your Honor.

17 THE COURT: Well, I don't -- you don't need to  
18 pass the witness. He's not relevant to what we're here  
19 today for. Okay. Is there something else you're going to  
20 ask him about? Anything else other than Sonder claims?

21 MR. CHOUDHURI: Maybe communications with the  
22 trustee as it relates to the trustee's exercise of how --  
23 what judgments has the trustee made (indiscernible) --

24 THE COURT: Okay. It's not relevant.

25 Thank you, Mr. Phillips. Thank you for appearing.

1     You're excused.

2                 MR. PHILLIPS:  Thank you, Your Honor.

3                 THE COURT:  Thank you.  Do you have another  
4     witness, sir?

5                 MR. CHOUDHURI:  Your Honor, I was going to call  
6     Russell Ingram again as it relate to some rebuttal aspects.  
7     But I don't want to frustrate the court anymore because he  
8     was in court --

9                 THE COURT:  If Mr. Ingram wants testify again and  
10    you want to call him again, that's fine.  As long as it's  
11    relevant, I want to hear it.  Okay.  But if it's not  
12    relevant, I don't want to hear it.

13                MR. CHOUDHURI:  I can just proffer or I can  
14    just --

15                THE COURT:  I don't want a proffer.  If you want  
16    to call him as a witness, call him.

17                MR. FITZMAURICE:  Your Honor, rebutting what?  
18    There's been no other --

19                THE COURT:  I don't know.  But he's got to get on  
20    the stand for me to figure that out.  So you want to call  
21    him?

22                MR. CHOUDHURI:  Yes.

23                THE COURT:  All right.  Mr. Ingram, call on up.  
24    Is he here?

25                MR. TROOP:  Your Honor --

1 MR. FITZMAURICE: He was on the Zoom this morning.

2 MR. TROOP: He was on the Zoom this morning. Your  
3 Honor, Andrew Troop, for Pillsbury, for National Bank of  
4 Kuwait. This is their case-in-chief.

5 THE COURT: I understand.

6 MR. TROOP: Who can they rebut? Who can they call  
7 as a rebuttal witness? They called them as a witness. It  
8 sounds as though we put a witness up that they're going to  
9 rebut. I'm just trying to move this along.

10 THE COURT: I know and I'll let you recall him.  
11 Is he here? Is he on the phone? Can we hear him. Is he on  
12 the phone?

13 CLERK: I do not see him, sir. His name was on  
14 the list earlier. There's no -- I don't know what happened  
15 to the call. It suddenly stopped working. It's seven  
16 minutes behind.

17 THE COURT: I know. It's three to six.  
18 Mr. Choudhri?

19 MR. CHOUDHURI: I can't get --

20 THE COURT: Okay. That's fine. Do you have  
21 anyone else you want to call?

22 MR. CHOUDHURI: I'd like to call R.J. Shannon.

23 THE COURT: All right. Mr. Shannon, come on  
24 forward. Please raise your right hand to be sworn. Do you  
25 swear or affirm to tell the truth, the whole truth and

1 nothing but the truth, so help you God?

2 MR. SHANNON: I do.

3 THE COURT: Please be seated, sir.

4 Go ahead.

5 DIRECT EXAMINATION OF R.J. SHANNON

6 BY MR. CHOUDHURI:

7 Q Mr. Shannon, you spoke to Paul Caldwell, right?

8 A I did.

9 Q And you've seen a letter of intent for a signed  
10 contract that Paul Caldwell signed.

11 MR. FITZMAURICE: Objection, Your Honor, as to  
12 letter, lacks foundation as to signed contract and letter of  
13 intent.

14 MR. CHOUDHURI: I can pull it up, Your Honor. I'm  
15 sorry.

16 THE COURT: Okay. I'll sustain the objection as  
17 to lack of foundation. Go ahead.

18 BY MR. CHOUDHURI:

19 Q Mr. Shannon, you and I have met before in 2021,  
20 correct?

21 A Yes, I believe it was 2021.

22 Q You came to my house and you came to my office. Do you  
23 recall that?

24 A I am confident I never came to your house. I did  
25 attend with Mr. Parkins your office at, I believe, 1001 West

1 Loop.

2 Q Yeah. Let's -- going to go back to --

3 MR. FITZMAURICE: So, Your Honor, relevance to  
4 credit bidding?

5 THE COURT: I'm going to give a little leeway.  
6 It's just preliminary. We'll get to that point.

7 BY MR. CHOUDHURI:

8 Q Mr. Shannon, you were with a firm called Parkins Lee &  
9 Rubio, correct?

10 A I was an associate there, yes.

11 Q And how many lawyers were at this firm?

12 A I believe at that time it was four.

13 Q And would that be Leonard Parkins, Kyung Lee and R.J.  
14 Shannon?

15 A And Charles Rubio.

16 Q And Charles Rubio.

17 A Yes.

18 Q And are you aware that the Bank of Kuwait had received  
19 offers from the borrower, the debtor, to sell the building  
20 and lease the building in around August of 2021?

21 MR. FITZMAURICE: Objection, Your Honor, lacks  
22 foundation.

23 THE COURT: I'll sustain the objection.

24 MR. CHOUDHURI: I'm going to take this off, Your  
25 Honor. Hold on. I'm going to pull this on.



1                   THE COURT: Just pull the cord off. It'll stop  
2 projecting.

3 BY MR. CHOUDHURI:

4 Q Mr. Murray, you -- Mr. Shannon, you have produced lots  
5 of documents in this case known as Murray production; is  
6 that fair?

7 A I don't believe that is how it was designated. But  
8 there were lots of documents.

9 Q And those documents are basically inclusive of your  
10 investigation and interviews that you conducted for the  
11 trustee, correct?

12 A It was in response to requests that may have had some  
13 of that in it. I don't know if that's how I'd characterize  
14 it.

15 Q So when did you leave Parkins Lee & Rubio.

16 A It was either June 1st or the end of May of 2022. And  
17 actually, I do remember. I believe it was May 31st.

18 Q And our communications were limited to only the debtor  
19 in this case or did we have communications as it related to  
20 other representations of me personally in 2425 WL?

21 MR. FITZMAURICE: Objection, Your Honor, relevance  
22 to the bank's ability to credit bid at the auction.

23 THE COURT: Again, what's the relevance to the  
24 credit bidding?

25 MR. FITZMAURICE: Your Honor, this is going to

1 show collusion and bad faith and misrepresentations to the  
2 court, which I can prove, and I'm getting there because  
3 there's been -- you have a May 15th order, Your Honor, where  
4 you said if there are any conflicts (indiscernible) the  
5 parties, and I have come to find out --

6 THE COURT: Again, Mr. Choudhri, here's the  
7 problem, okay? You filed a motion. I gave you a copy of  
8 that motion. You now want to raise all these secondary  
9 issues where there's been no pleadings, nobody's on notice,  
10 okay? The only thing that's before me at this point in time  
11 is the motion to prohibit credit bidding at 353. That's  
12 what I want to hear evidence about. Okay. You're off in  
13 the hinterlands somewhere, okay? And I'm not going to allow  
14 it. All right. So two questions, time up and we're done.  
15 Okay. Go ahead.

16 BY MR. CHOUDHURI:

17 Q You don't recall being on a call with Kyung Lee,  
18 myself, Reese Baker, Melissa Hayward and others where Kyung  
19 Lee and yourself stated unequivocally that we will not allow  
20 any sale to go forward if there is no cap -- where there's  
21 no credit bidding. Do you recall anything like that?

22 A I do not recall a statement like that being made. I do  
23 recall calls, but not that statement.

24 Q Mr. Shannon, you record conversations you have with  
25 people, correct?

1 A Not normally. There were a couple in this case with  
2 respect to interviews that the trustee was not able to  
3 attend.

4 Q So you have a recorded conversation with Paul Caldwell,  
5 correct?

6 A I do.

7 Q And we asked you for that, and you've refused to  
8 provide that?

9 A You asked me for it yesterday afternoon. I believe it  
10 was Mr. Sather who asked me for it, and I explained the  
11 reasons why I believe it was subject to attorney work  
12 product protection. I cited cases and I got no response  
13 from Mr. Sather.

14 Q And you also had -- have you recorded conversations  
15 you've had with anybody at NBK or the attorneys at NBK?

16 A No.

17 Q Have you recorded conversations you've had with me?

18 A No.

19 Q On May 24th, we had a Zoom meeting, right?

20 A I don't -- I don't know if on May 24th we did.

21 Q There was an icon that popped up that said that this  
22 call is being recorded by AI or something like that. Do you  
23 recall that?

24 MR. FITZMAURICE: Objection, Your Honor, lacks  
25 foundation and also relevance to the credit bidding.

1           THE COURT: I'll sustain the objection as to lacks  
2 foundation. Thank you.

3 BY MR. CHOUDHURI:

4 Q       There are marketing materials that I've asked you for,  
5 what the bidders have been provided in this case, correct?

6 A       There are marketing materials, and you have asked for  
7 them. Yes.

8 Q       And you've refused to provide that to me, right?

9 A       No. Actually, I offered to provide them to you. You  
10 asked me for them on Saturday, and I said after the hearing  
11 on Monday, we'll figure out a way to get those to you.

12 Q       Did Deirdre Brown ask you for those?

13 A       Deirdre Brown asked something about the marketing  
14 materials, although it was a little ambiguous that's what  
15 she was talking about. And then the following day, I  
16 believe the following day, after she asked, she withdrew  
17 from the case.

18 Q       Mr. Shannon, have you made statements to others that  
19 I've gone in the control room and I am a cause of whatever  
20 leak that has taken place at the building?

21           MR. FITZMAURICE: Objection, Your Honor, lack of  
22 foundation as to a leak, but also relevance to the credit  
23 bidding motion.

24           THE COURT: Again, we're off in the hinterlands.  
25 And so again, you're on a very, very short leash. Again,

1 nothing pled. You're making wild allegations that aren't  
2 anywhere in the pleadings and you unfortunately are doing  
3 damage to your case, I think, by making those allegations,  
4 Mr. Choudhri. So please ask questions that are relevant to  
5 the motion to prohibit credit bidding. I'm happy to hear  
6 that. But I don't want to hear anything else.

7 BY MR. CHOUDHURI:

8 Q Have you fully investigated the claims against the Bank  
9 of Kuwait?

10 A I have helped the trustee in his investigation. I  
11 believe it's a full investigation. I would say yes.

12 Q So you believe your investigation is complete?

13 A Yes.

14 Q Do you have any value as to what those claims are  
15 worth?

16 A I don't have a dollar amount.

17 MR. MURRAY: Your Honor, may I object?

18 THE COURT: Yes.

19 MR. MURRAY: I own this privilege and I don't let  
20 him answer.

21 THE COURT: Okay. Thank you. I'll sustain the  
22 objection. But I'll also say that Mr. Murray testified as  
23 to what he thought the value of those claims were, and I  
24 heard his evidence.

25 BY MR. CHOUDHURI:

1 Q Have you had conversations with Hilco regarding credit  
2 bidding?

3 A I have not, no.

4 Q Are you aware that the phone number -- let me back up.  
5 There's a big sign on the building that says bankruptcy  
6 sale, right?

7 A I've seen a picture of it, but I have not seen it with  
8 my own eyes. I believe so, but I'm not entirely sure of  
9 that.

10 Q And that phone number went to a 99 cent store real  
11 estate site, a dedicated line for the sale of a 99 cent real  
12 estate portfolio by Hilco, correct?

13 A It did at one -- well, I'm not entirely sure. It did  
14 reference a 99 cent store when you called that number, at  
15 least for a period.

16 Q Do you recall on our phone call that we had actually  
17 called the number so you could hear it yourself?

18 A I do recall that.

19 Q And I can play it in a second. But it was a dedicated  
20 phone line to you --

21 MR. CHOUDHURI: And I'll play the recording in a  
22 second. It's an exhibit (indiscernible). So the phone  
23 number -- Your Honor, may I request assistance to playing  
24 the (indiscernible) --

25 THE COURT: Certainly.

1 WOMAN 1: May I approach?

2 THE COURT: Yes. Come on up.

3 WOMAN 1: Thank you, Your Honor.

4 MR. CHOUDHURI: Appreciate it (indiscernible).

5 BY MR. CHOUDHURI:

6 Q Did you need Hilco -- the Bank of Kuwait's approval  
7 before you hired Hilco?

8 A I didn't hire Hilco. The trustee did.

9 Q And so are there communications where the trustee is  
10 waiting on the bank to approve before hiring Hilco?

11 MR. FITZMAURICE: Objection, Your Honor, relevance  
12 as to whether the bank gets to credit bid.

13 THE COURT: I'll sustain the objection as to  
14 relevance.

15 BY MR. CHOUDHURI:

16 Q Mr. Shannon, do you believe that -- hang on. Mr.  
17 Shannon, I asked you what the admin claim amounts are. Do  
18 you recall that?

19 MR. SHANNON: Objection. Here today? No, you  
20 didn't. So it misstates the --

21 THE COURT: I don't think you asked that question.

22 MR. CHOUDHURI: No. No, no. I didn't ask it  
23 today.

24 THE COURT: Well, ask the question to the witness,  
25 please.

1 MR. CHOUDHURI: Yeah.

2 BY MR. CHOUDHURI:

3 Q I emailed you, Mr. Shannon, asking you what are the  
4 admin claims, correct?

5 A Yes.

6 Q And others like Mark Smith with Barron & Newburger have  
7 also asked you, last week, what are the admin claim amounts,  
8 true?

9 A I believe it was last week that Mark Smith asked, yes.

10 Q And every one of those questions, did you respond with  
11 a number or an approximate number?

12 A No.

13 Q And when asked by me, your response was it's  
14 irrelevant, correct?

15 A That's not my full response. I think it was a five  
16 point thing about it. I'm not sure if I used the word  
17 irrelevant. I might have said it doesn't matter or it's not  
18 material, but along those lines, yes.

19 Q So if somebody wants to come along and provide the  
20 estate a better deal, and they want to know what the admin  
21 claim amounts are, how is that not relevant?

22 MR. FITZMAURICE: Objection, Your Honor, relevance  
23 to the bank's credit bidding at the auction tomorrow.

24 THE COURT: Again, we're talking about plan  
25 confirmation potentially. We're not talking about credit



1 bidding, Mr. Choudhri.

2 MR. CHOUDHURI: And I could go (indiscernible).

3 BY MR. CHOUDHURI:

4 Q Mr. Shannon, you've received multiple offers to buy the  
5 claims against the Bank of Kuwait, correct?

6 A I have not received them. I believe they were directed  
7 towards the trustee.

8 Q Were you emailed offers to buy the estate's claims  
9 against the Bank of Kuwait?

10 MR. FITZMAURICE: Your Honor, relevance to the  
11 bank's credit bidding at the auction.

12 THE COURT: I'll sustain the objection. We've  
13 gone through this before, Mr. Choudhri. It's not relevant.  
14 And again, you're on a very, very tight rope. We've been at  
15 this now for almost nine hours. And so again, I'm going to  
16 direct you and say if you want me to hear something, I  
17 really want to hear it, as long as it's relevant. But if  
18 it's not relevant, I don't want to hear it. Not only do I  
19 not want to hear it, I'm going to make you sit down and be  
20 quiet if you don't. And I'm not going to let you call any  
21 more witnesses and go through this over and over and over  
22 and over again. All right. So please ask the question  
23 that's relevant to credit bidding so I can hear it and we  
24 can move on.

25 BY MR. CHOUDHURI:

1 Q If the phone number on the building is wrong and the  
2 bank is allowed to credit bid, is that a fair process in  
3 your opinion?

4 MR. FITZMAURICE: So objection, Your Honor,  
5 assumes facts not in evidence as to the phone number on the  
6 building is wrong. It mischaracterizes the witness'  
7 testimony.

8 MR. CHOUDHURI: Sorry. Let me withdraw that  
9 question.

10 BY MR. CHOUDHURI:

11 Q Mr. Shannon, what is the phone number listed on -- so  
12 there's two signs on the building, right? There's a sign on  
13 top of the building, or kind of in the middle, third floor  
14 up, a banner that says bankruptcy sale.

15 A I don't know where in the building it was. I saw like  
16 a picture of it.

17 Q Okay, and then there's also this sign that we're  
18 looking at that says bankruptcy sale, right?

19 MR. FITZMAURICE: Objection, Your Honor, assumes  
20 facts not in evidence and lacks foundation as to there is  
21 also this sign. The witness just testified he didn't know  
22 that that was the case.

23 THE COURT: I'll sustain the objection.

24 BY MR. CHOUDHURI:

25 Q Are you familiar with the sign that we're looking at?

1     A     I'm actually not. I don't think I've seen that  
2     particular sign before. It does look like the building  
3     behind it. But --

4     Q     And what is the phone number on that sign?

5     A     855-755-2300.

6     Q     And when we had our conversation, I think end of May,  
7     on a Zoom call, do you recall that?

8     A     I do recall that, and it probably was the end of May.  
9     I'm not entirely sure on the exact date though.

10    Q     And so the end of May would be approximately a month  
11    since Hilco was hired, right?

12                 MR. FITZMAURICE: Objection, Your Honor, lacks  
13    foundation as to when Hilco was hired, also relevance to  
14    credit bidding.

15                 THE COURT: I'll sustain the objection as to  
16    relevance as to credit bidding -- bidding, excuse me.

17                 MR. CHOUDHURI: I'd like to play this.

18                 MR. FITZMAURICE: So Your Honor, we object to the  
19    playing of this. I don't know what it is, who -- or  
20    anything else about it.

21                 THE COURT: You can't just play something like  
22    that. That's not the way this works. Okay. So I'll  
23    sustain their objection. Thank you. If you want to ask him  
24    about if he called the phone number, what it reached, those  
25    sorts of questions, ask away. Go ahead (indiscernible).

1 BY MR. CHOUDHURI:

2 Q Did you call the phone number yourself?

3 A I did.

4 Q And do you recall hearing a message that said 99 cent  
5 store real estate by Hilco, dedicated hotline?

6 A I don't remember dedicated hotline. I do remember in  
7 reference to 99 cent store or something. But 99 cent was  
8 there, was in the message.

9 MR. CHOUDHURI: Your Honor, may I move to play the  
10 phone call so that at least it can be transparent on what --  
11 how the phone rings?

12 MR. FITZMAURICE: So Your Honor, objection. The  
13 witness testified earlier that there was a period of time  
14 where that was the case, and it's no longer true. So we'd  
15 object on that basis. We don't know -- we don't have any  
16 idea as to when this recording was made, whose phone or  
17 anything along -- anything along those lines.

18 THE COURT: I'm going to sustain the objection as  
19 foundation on this witness. If you have another witness,  
20 basically you can prove it up. Thank you.

21 BY MR. CHOUDHURI:

22 Q Mr. Shannon, on our phone call that we had, do you  
23 recall that I called the phone number together with you? At  
24 the end of May, me and you had a Zoom call, correct?

25 MR. FITZMAURICE: Objection, Your Honor, relevance

1 to credit bidding.

2 MR. CHOUDHURI: We've covered that.

3 MR. FITZMAURICE: And --

4 THE COURT: Go ahead. I've got to hear it one  
5 more time. Your objection is?

6 MR. FITZMAURICE: Oh, I'm sorry. Relevance as to  
7 credit bidding, Your Honor.

8 THE COURT: I'll sustain the objection. Thank  
9 you.

10 BY MR. CHOUDHURI:

11 Q Have you authorized Hilco or your client or you -- or  
12 are you aware Hilco is marketing the property with the  
13 furniture in it, meaning assets? It's being represented  
14 that assets that are being sold are not assets of the  
15 estate. Are you aware of that?

16 MR. FITZMAURICE: Objection, Your Honor, as to  
17 relevance.

18 THE COURT: Mr. Choudhri, I've already warned you  
19 on the record that the furniture is not relevant to credit  
20 bidding. You've just gone there again. One more time, I'm  
21 going to sanction you. I'm not only going to tell you to  
22 sit down, but I'm going to sanction you. So please ask  
23 questions. You're an intelligent man. You've been through  
24 this. You've heard everything I've said. Please ask  
25 questions that are relevant. Thank you.

1 BY MR. CHOUDHURI:

2 Q Did you ever have conversations with the Bank of Kuwait  
3 regarding credit bidding?

4 A With their attorneys, maybe. I think it was in an  
5 email. I don't know if we ever had a conversation about it.

6 Q Who negotiated the sale motion and the credit bid and  
7 the stalking horse agreements with the Bank of Kuwait?  
8 Whose redlining -- let me withdraw that.

9 Mr. Shannon, were you the one who was actually in  
10 control of redlining the back and forth drafts with the Bank  
11 of Kuwait?

12 MR. FITZMAURICE: Objection, Your Honor, relevance  
13 to credit bidding.

14 THE COURT: I'll sustain the objection.

15 BY MR. CHOUDHURI:

16 Q Was there any reference in any of those documents to  
17 credit bidding?

18 A I actually don't remember a reference to credit bidding  
19 in the bid procedures motion. Now the APA, I believe, did.  
20 It certainly -- I don't think it would have referenced it as  
21 discussing credit bidding. It might have referenced a  
22 credit bid by the bank, but --

23 Q Was there any draft where the tax lien was part of the  
24 credit bid?

25 A Maybe. I don't remember that. I believe this would

1 have happened back in April, maybe in late March when that  
2 was being negotiated.

3 Q Do you believe that a cap on (indiscernible) credit bid  
4 would promote bidding?

5 MR. FITZMAURICE: Same objection, Your Honor, as  
6 to relevance to the (indiscernible) --

7 THE COURT: I'll sustain the objection as to  
8 relevance.

9 BY MR. CHOUDHURI:

10 Q So did you have discussions with the Bank of Kuwait  
11 about you wanted to cap the credit bidding?

12 A It would have been with their attorneys. I certainly  
13 communicated the request that they cap the credit bid.

14 Q So it was something that you or your client wanted to  
15 do, is cap credit bidding?

16 MR. FITZMAURICE: Objection, Your Honor. We've  
17 been over this ground before several times with other  
18 witnesses. Mr. Murray, who is in fact the client, testified  
19 on this topic. So I'd object on that basis.

20 MR. CHOUDHURI: Your Honor, may I project --

21 THE COURT: Sure, go ahead.

22 BY MR. CHOUDHURI:

23 Q Mr. Shannon, is this an email that you sent to Andrew  
24 Troop, Patrick Fitzmaurice and Charles Conrad?

25 A It looks like it. If you could zoom down? Yeah, at

1     least -- at least that part of it.  Yes, that is -- I  
2     believe that is an email that I sent.

3             MR. CHOUDHURI:  I would like to move to admit this  
4     document, Your Honor.

5             THE COURT:  Again, do you have an ECF number?

6             MR. CHOUDHURI:  I do.

7     BY MR. CHOUDHURI:

8     Q     What is the date of this email, Mr. Shannon?

9     A     It looks like April 28, 2024.

10    Q     And the time?

11    A     I don't remember this, but it says there 5:56:57 p.m.

12    Q     Mr. Shannon, could you read what it says on maximum  
13    credit bidding?

14             MR. FITZMAURICE:  Your Honor, the exhibit is not  
15    in evidence.

16             THE COURT:  Again, do you have an ECF number?  I'm  
17    happy to see if anyone has objections and rule on them.  But  
18    it's got to be on ECF in order for me to admit it.  There's  
19    no way to make a record otherwise.  Do you have an ECF  
20    number?  If it's not on ECF, you can't admit it.  It's that  
21    simple.  That's why I enter the orders that I enter.

22             MR. CHOUDHURI:  Your Honor, I can find it.  Just  
23    one second.  Your Honor, there was a (indiscernible) trying  
24    to find it.  There was a motion that might have been  
25    duplicative that Mr. Baker had filed.



1 THE COURT: I just need an ECF number. I don't  
2 need an explanation. Just give me the ECF number.

3 MR. CHOUDHURI: I'm trying to find it right now.

4 MR. BURKS: Your Honor, it's 499-29. ECF number.

5 MR. CHOUDHURI: Yes, sir. Thank you. 499-29,  
6 Your Honor. I'd like to pull it up.

7 THE COURT: Are there any objections to 499-29?

8 MR. CHOUDHURI: I'd like to ask about it. I'm  
9 sorry. We were wrong --

10 THE COURT: All right.

11 MR. TROOP: Then we object, Your Honor.

12 THE COURT: Well, I'm going to look and see. It  
13 is --

14 MR. FITZMAURICE: 499-29 is an email from May  
15 12th. I think the email we were looking at earlier was from  
16 April.

17 THE COURT: Yeah. All right, so move along. I  
18 mean, I'm not going to sit here and let you basically do  
19 what you should have done before trial. Ask your next  
20 question. Mr. Choudhri, ask your next question. I'll give  
21 you one more time. Ask your next question.

22 MR. CHOUDHURI: So I'm just trying to find  
23 something. Sorry, Your Honor.

24 THE COURT: Mr. Choudhri, ask your next question.

25 MR. CHOUDHURI: I found it, Your Honor. It's

1 document -- if I may project, Your Honor.

2 THE COURT: Tell me what ECF number it is.

3 MR. CHOUDHURI: 463-2.

4 THE COURT: Any objection to 463-2?

5 MR. FITZMAURICE: Sorry, Your Honor. I need to  
6 see it. This is the May 12th email again? Is this not --

7 THE COURT: This is not the same thing. Okay.  
8 That's the same thing. Is that what you want to ask him  
9 about?

10 MR. CHOUDHURI: Yes, Your Honor. This is what I  
11 have up.

12 THE COURT: Okay. Any objection to 463-2?

13 MR. FITZMAURICE: No, Your Honor.

14 THE COURT: All right. It's admitted.

15 (Trial Exhibit 463-2 entered into evidence)

16 THE COURT: Thank you.

17 Go ahead, Mr. Choudhri, ask your question.

18 BY MR. CHOUDHURI:

19 Q Mr. Shannon, can you explain what you mean by Paragraph  
20 Number 1, or would you read Paragraph Number 1, please?

21 A Sure.

22 MR. FITZMAURICE: Relevance, Your Honor, to the  
23 credit bidding. We've been down this road a lot. There's  
24 been a lot of testimony, a lot of evidence already on the  
25 fact that the trustee asked the bank to agree to a maximum

1 credit bid and that the bank said no. This is cumulative,  
2 unnecessarily so, given the many times this issue has been  
3 discussed. So we object.

4 THE COURT: All right. I'm going to overrule the  
5 objection.

6 Go ahead and ask him your question.

7 MR. CHOUDHURI: Thank you.

8 BY MR. CHOUDHURI:

9 Q Would you read what Paragraph 1 says, Mr. Shannon?

10 A Yes. Maximum credit bid. To the extent that the  
11 debtor and 2425 WL have a non-frivolous point, it is that a  
12 cap on NBK's credit bid would promote bidding. If there's  
13 some maximum amount that NBK would commit to, that would be  
14 helpful. Comparing that maximum to an attached bid would  
15 also need to consider the tax claims. But that is a  
16 separate issue.

17 Q But the bank did not agree to put a cap despite that's  
18 something that you wanted to do?

19 MR. CHOUDHURI: Objection, Your Honor, lacks  
20 foundation.

21 THE COURT: I'll sustain the objection.

22 Mr. Choudhri, next question.

23 BY MR. CHOUDHURI:

24 Q Can you explain what you mean by timing of hearing of  
25 2425 WL's objection to NBK's claim? What does that mean,

1 Mr. Shannon?

2 A Sure. 2425 WL set their -- self-calendared their  
3 objection for a couple hours before the auction. And I  
4 think we even referenced it in the reply that's referenced  
5 in the first paragraph here where we thought that was an  
6 attempt to interfere with the auction. And so I was, you  
7 know, seeing if there was a -- there were two possible ways  
8 to deal with that one, which is addressed after the dash  
9 there.

10 Q Mr. Shannon, is there a reason that there's been a lack  
11 of -- or do you believe that there has been a lack of  
12 transparency between -- or let me back up. I want to say  
13 this right, so I don't say it wrong. Do you believe the  
14 trustee and this representative have been transparent to  
15 other creditors in this case?

16 MR. FITZMAURICE: So --

17 MR. MURRAY: Object.

18 MR. FITZMAURICE: -- objection, Your Honor, as to  
19 relevance to the credit bidding and I --

20 THE COURT: It's not relevant to credit bidding at  
21 all.

22 MR. FITZMAURICE: -- I think Mr. Murray has other  
23 objections as well.

24 THE COURT: Move on, Mr. Choudhri.

25 BY MR. CHOUDHURI:

1 Q Do you recall questions by me about credit bidding --  
2 let me go back up (indiscernible) --

3 MR. CHOUDHURI: I'm sorry, Your Honor. Just one  
4 second.

5 MR. MURRAY: Your Honor, I want to object to  
6 questions that are asked or about to be, about Mr. Shannon's  
7 beliefs, opinions, thoughts. Those are things that the  
8 estate pays for. He hasn't paid for it, and I'm not waiving  
9 privilege. If he's asking about facts and if the facts are  
10 what Mr. Shannon heard Mr. Choudhri say, that's hearsay and  
11 not a party opponent.

12 THE COURT: All right. Thank you.

13 BY MR. CHOUDHURI:

14 Q The cash collateral motion filed by the trustee, I  
15 believe it was May -- March the 21st. It had a timeline of  
16 selling the building and it had a credit bit component in  
17 it.

18 MR. CHOUDHURI: That's a bad question. I'm sorry,  
19 Your Honor.

20 MR. MURRAY: Object to relevance. It's a motion  
21 the court's ruled on. The order speaks for itself.

22 THE COURT: I'll sustain the objection as to  
23 relevance.

24 Mr. Choudhri, you're taking way too long between  
25 questions and you need to speed your presentation up and you

1     need to ask relevant questions. We can't take 35 to 45  
2     seconds every time between every time that you pause to ask  
3     a question, not at 6:15 in the afternoon or actually 20  
4     to -- that clock's wrong. It's 20 to 7:00.

5     BY MR. CHOUDHURI:

6     Q     Yeah. Mr. Shannon, do you believe that a credit bid  
7     promotes --

8             THE COURT: They're going to object. You can't  
9     ask him what he believes. Okay. Mr. Murray's objected  
10    already. I've sustained the objection. Ask something else.

11    BY MR. CHOUDHURI:

12    Q     Are there any buyers that you've spoken to that have  
13    taken issue with the credit bid?

14    A     No.

15    Q     Have you spoken to any buyers?

16    A     Their counsel.

17    Q     How many buyers have you spoken to?

18    A     Either two or three. Well, I mean, buyers, you know, I  
19    don't know. Potential bidders, I guess is --

20    Q     Potential bidders, prospects.

21    A     Then at least three.

22    Q     And has there been any discussion about credit bidding  
23    in those calls or communications?

24             MR. FITZMAURICE: Objection, Your Honor. The  
25    issue on the table is whether the bank should be able to

1 credit bid.

2 THE COURT: I'll sustain the objection. It's not  
3 relevant.

4 BY MR. CHOUDHURI:

5 Q Mr. Shannon, if the bank received -- if the bank acted  
6 in bad faith and the bank received --

7 MR. MURRAY: Objection, Your Honor. We're gearing  
8 up for an opinion question and I want to lay down a  
9 marker --

10 THE COURT: It assumes facts not in evidence that  
11 the bank acted in bad faith. I'm not going to allow it.

12 MR. MURRAY: Judge, and I'd like to make an oral  
13 motion for sanctions for at least the time that the estate  
14 is spending for Mr. Shannon and his counsel. Others might  
15 have the same objection. But for the amount of time spent  
16 on every question that he asked that has been asked and  
17 answered or irrelevant or asking for opinion or any of the  
18 other bases that the court has sustained objections over and  
19 over again.

20 THE COURT: I'll take that up. Thank you.

21 BY MR. CHOUDHURI:

22 Q Mr. Shannon --

23 MR. CHOUDHURI: Let me just pull the document  
24 here.

25 BY MR. CHOUDHURI:

1 Q Mr. Shannon, are you aware of offers that were sent by  
2 Holland & Knight or were you recipient of offers that were  
3 sent in 2021 by Holland & Knight to the National Bank of  
4 Kuwait, which included the \$85 million offer?

5 MR. FITZMAURICE: So objection, Your Honor, lacks  
6 foundation, assumes facts not in evidence. It's also not  
7 relevant.

8 THE COURT: It's not relevant, and I'm going to  
9 sustain the objection.

10 And Mr. Choudhri, you've worn out you're welcome  
11 on this witness. You may step down. You're not going to  
12 ask him any more questions.

13 All right. Hold on, hold on. I want to make sure  
14 that no one else wants to ask you any questions.

15 Mr. Burks, do you want to ask any questions?

16 MR. BURKS: No, Your Honor.

17 MR. FITZMAURICE: Briefly, Your Honor?

18 THE COURT: Go ahead.

19 CROSS-EXAMINATION OF R.J. SHANNON

20 BY MR. FITZMAURICE:

21 Q Good evening, Mr. Shannon. You testified earlier that  
22 you spoke with Paul Caldwell?

23 A I did.

24 Q Why did you do that?

25 A To investigate the claims against NBK.



1 Q And as a result of that conversation, did you reach a  
2 conclusion?

3 A I didn't reach a -- I personally did not reach a  
4 conclusion about claims against NBK, no.

5 Q Did Mr. Caldwell tell you whether or not the bank had  
6 told them the contents of the confidential settlement  
7 agreement between the bank on the one hand and Mr.  
8 Choudhri's entities on the other?

9 MR. BURKS: Objection, calls for hearsay.

10 MR. FITZMAURICE: Your Honor, whether or not  
11 Mr. -- the results of that conversation informed the  
12 trustee's investigation and it's relevant to whether -- it's  
13 relevant to the view that the trustee has formed. The fact  
14 that the answer -- regardless of the truth, the answer has  
15 independent relevance to the (indiscernible) --

16 THE COURT: I'll overrule the objection. Go ahead  
17 and answer the question.

18 THE WITNESS: I'm sorry. Could you please restate  
19 it?

20 MR. FITZMAURICE: Sure.

21 BY MR. FITZMAURICE:

22 Q Did Mr. Caldwell tell you whether or not the bank had  
23 told him anything about the confidential settlement  
24 agreement?

25 A He told me that the bank did not tell him anything

1 about the settlement agreement.

2 Q And did he tell you that the reason he didn't complete  
3 the transaction with the debtor was as a result of conduct  
4 by the debtor?

5 MR. BURKS: Objection, leading and hearsay.

6 THE COURT: I'll overrule the objection. Go ahead  
7 and answer the question.

8 THE WITNESS: Yes.

9 BY MR. FITZMAURICE:

10 Q And that was the reason the transaction didn't go  
11 forward?

12 A I don't know if that's the reason or not.

13 Q That was what he told you?

14 A Yes.

15 MR. FITZMAURICE: Thank you.

16 THE COURT: Thank you.

17 Mr. Choudhri, any questions based on those two  
18 limited questions that were asked?

19 REDIRECT EXAMINATION OF R.J. SHANNON

20 BY MR. CHOUDHRI:

21 Q And Mr. Shannon, there's a recording of this  
22 conversation. So whatever you and Mr. Caldwell talked about  
23 is recorded in an audio conversation that you made, correct?

24 A Not every -- not all of it. Only once we started  
25 talking about relevant things, but yes.

1 Q And that's not an audio recording that has been  
2 produced.

3 MR. MURRAY: Objection, asked and answered.

4 THE COURT: I'll sustain the objection.

5 MR. MURRAY: I renew my request for sanctions on  
6 repetitive questions.

7 THE COURT: All right. Thank you.

8 BY MR. CHOUDHURI:

9 Q As it relates to Mr. Caldwell, in response to  
10 questions, Mr. Shannon, you wrote a memo that discussed your  
11 impressions or conversation of Paul Caldwell, correct? What  
12 he told you, what you said, correct?

13 MR. FITZMAURICE: So Your Honor, it's not my  
14 privilege. My understanding --

15 MR. MURRAY: (indiscernible)

16 MR. FITZMAURICE: My understanding is that there  
17 was a document that was produced. I don't know if this is  
18 the document that Mr. Choudhri is referring to. The trustee  
19 has asked for it back, saying that -- saying that it was  
20 inadvertently produced, and it's privileged. So if that's  
21 what they're talking about, I just want to make sure that  
22 we're all on the same page, that there's a live request to  
23 claw back that document based on an inadvertent production.

24 MR. MURRAY: Yeah. I don't object to asking about  
25 the fact that a memo was prepared at my request for me. I

1 don't want to answer anything about what's in it.

2 THE COURT: All right. So you can ask about the  
3 memo, but if it's been asked -- it's been asked to claw back  
4 and it was produced inadvertently, I would say that it's  
5 still privileged.

6 MR. CHOUDHURI: I'm not going to ask questions  
7 about the memo, Your Honor. I'm going to ask questions  
8 about --

9 THE COURT: Well, ask away.

10 BY MR. CHOUDHURI:

11 Q I would like to bring to your attention ECF 499-45 and  
12 let's pull it up.

13 MR. FITZMAURICE: Your Honor, 499-45 appears to be  
14 a, sorry, PowerPoint is that what I was looking for? I  
15 apologize. Produced by CBRE. So I don't think that's  
16 relevant to this witness.

17 MR. CHOUDHURI: It's Exhibit 45.

18 BY MR. CHOUDHURI:

19 Q Mr. Shannon, you had a -- you were made aware from Mr.  
20 Caldwell that he wanted to pay \$75 million for the property,  
21 correct?

22 A I'm not sure if that's how I was made aware of that. I  
23 believe there was a document in some pleading that indicated  
24 an amount. I don't know if I became aware of it from him.

25 MR. TROOP: Your Honor, just because people can't

1     see what's going on, including me, Mr. Choudhri is flipping  
2     through a document and asking questions from it. And the  
3     question I would have, is he flipping through the document  
4     that was just clawed back?

5             THE COURT: I do not know. I'm not looking what  
6     he's looking at on the screens, for that very reason. So I  
7     don't know what he --

8             MR. TROOP: I guess, Your Honor, then the question  
9     is, given your ruling, it's clawed back and it's privileged.  
10    I would ask -- leave it on your screen, Mr. Choudhri.

11            MR. CHOUDHURI: Excuse me. You don't need to  
12    yell, Mr. Troop.

13            MR. TROOP: Actually, Mr. Choudhri, I think I did  
14    it. I apologize, though. I would think, Your Honor, it  
15    might be appropriate for you (indiscernible) --

16            THE COURT: All right. So let me just see what  
17    you're --

18            MR. TROOP: It could actually be something totally  
19    different.

20            MR. CHOUDHURI: It is totally different.

21            THE COURT: Let me just look at it.

22            MR. CHOUDHURI: Can I have I put it up, Your  
23    Honor?

24            THE COURT: Yeah.

25            MR. CHOUDHURI: So --

1 THE COURT: Hit connect.

2 MR. TROOP: He just changed it. Yeah. He just  
3 changed it.

4 BY MR. CHOUDHURI:

5 Q Mr. Shannon, this is not the document that you clawed  
6 back in an email the other day, is it?

7 A It's not.

8 Q Okay. Thank you.

9 MR. CHOUDHRI: Thank you, Mr. Troop.

10 THE COURT: All right. Go ahead, ask your  
11 question.

12 MR. CHOUDHRI: I would move to admit this  
13 document, Your Honor.

14 THE COURT: Again, is it on ECF? If it's not on  
15 ECF, I can't admit it.

16 MR. FITZMAURICE: It is, Your Honor. We can find  
17 the number, but it is on ECF.

18 MR. CHOUDHRI: 499-44.

19 THE COURT: 499-44. Any objections to 499-44?

20 MR. FITZMAURICE: Your Honor, I'd like to just  
21 make sure that that's in fact correct.

22 THE COURT: All right. I'll look, too.

23 MR. SATHER: It's 45.

24 MR. FITZMAURICE: 499-44.

25 THE COURT: Any objections?

1 MR. FITZMAURICE: Not from us, Your Honor.

2 THE COURT: From the trustee? It's admitted.

3 (Trial Exhibit 499-44 entered into evidence)

4 THE COURT: Thank you. Go ahead.

5 BY MR. CHOUDHURI:

6 Q Mr. Shannon, is this document's title R.J.'s notes from  
7 5/3/2024, called Paul Caldwell. Is this -- is this a  
8 document you authored?

9 A Yes. Well, I think so, I mean, based on the first  
10 page.

11 Q You want to look through it and confirm?

12 A Yes, if you wouldn't mind.

13 Q Is this your production on the bottom where it says TE  
14 0008629?

15 A It's not my production. It was the trustee's  
16 production in response to 2425 WL's request, but yes.

17 MR. CHOUDHURI: So we've admitted this document?  
18 This is --

19 THE COURT: It's admitted.

20 MR. CHOUDHURI: Thank you, Your Honor.

21 BY MR. CHOUDHURI:

22 Q. Mr. Shannon, what does this say? R.J. Shannon  
23 discusses previous bid amounts of Caldwell Soames mentioning  
24 \$35 million cash and a \$40 million note?

25 A So I can't remember where I obtained this information

1 or where I obtained the document from, but there's a  
2 document that purports to be a letter of indication from  
3 Paul Caldwell where it had those numbers on it, and I asked  
4 Mr. Caldwell about it. But that's what that reference is  
5 there.

6 Q And it says that you suggest that just a cash amount  
7 could likely secure a deal and acknowledge the need to  
8 review all documents and no guarantees. What do you mean by  
9 that?

10 A That \$35 million would be strong offer at the bid, or  
11 at the auction, but that I didn't have any guarantees and  
12 that Mr. Caldwell would need to review all the documents  
13 before he made any kind of bid. But I thought that \$35  
14 million cash would be a strong offer. I was attempting to  
15 get Mr. Caldwell to participate in the auction at this point  
16 in the -- in the --

17 Q And did you express to him or for him the bid  
18 procedures following that meeting you had with him?

19 A I sent him the bid procedures after the bid procedures  
20 order was entered, because he was somebody who I had a  
21 belief was someone who formerly was interested in the  
22 property. And I believe the order required me to send it to  
23 all of those people, and he is one of them.

24 Q So you were charged to investigate the claims against  
25 the Bank of Kuwait, right? You did this in that process,



1 correct? This interview was because you were investigating  
2 the veracity of the claims against the Bank of Kuwait; is  
3 that fair?

4 A Yes. That was the purpose behind the --

5 Q So if there's evidence that comes out that Mr. Caldwell  
6 was provided confidential information by the Bank of Kuwait  
7 that precluded him from going forward and paying \$75 million  
8 -- now let me back up. You're aware that \$75 million offer  
9 was for 55 percent of the building, right?

10 MR. FITZMAURICE: Objection, Your Honor, lacks  
11 foundation, assumes facts not in -- assuming that we're  
12 talking about just the \$75 million piece and not the --

13 THE COURT: I'll say the objection. It assumes  
14 facts not in evidence. Go ahead.

15 BY MR. CHOUDHURI:

16 Q Did you discuss the credit bid with Mr. Caldwell?

17 A I don't remember if I did or not. If I did, it would  
18 probably be in the document.

19 Q And you believe that conversation you had with Mr.  
20 Caldwell is an attorney-client privileged communication?

21 MR. FITZMAURICE: Objection, Your Honor. I think  
22 that mischaracterizes -- I think that mischaracterizes the  
23 witness' testimony.

24 THE COURT: I'll overrule the objection. Go  
25 ahead.

1           THE WITNESS: I don't know if it's -- I don't know  
2   -- I don't believe it's a privileged communication. I think  
3   it's subject to the actual recording and the particular  
4   questions that I asked him and the way I asked it to him is  
5   subject to attorney work product protection, which is  
6   technically different. But I do believe that is subject to  
7   attorney work product protection.

8   BY MR. CHOUDHURI:

9   Q     Would you believe that if the court and everyone here  
10   could actually hear the recording which was requested, it  
11   would actually shed more light --

12           MR. MURRAY: Objection. He's asking for his  
13   opinion.

14           THE COURT: I'll sustain the objection.

15   BY MR. CHOUDHURI:

16   Q     If the court ordered you to provide and produce that  
17   recording that you have with Paul Caldwell, will you?

18   A     I will comply with the court's orders.

19           MR. CHOUDHURI: Your Honor, I'd like to make an  
20   oral motion that those recordings that he mentioned are  
21   produced so there can be transparency in this process.

22           MR. MURRAY: I object. That's out of order. We  
23   have discovery pending in both directions.

24           THE COURT: I'll sustain the trustee's -- Mr.  
25   Murray's objection to that oral motion and deny it. Thank

1     you.

2     BY MR. CHOUDHURI:

3     Q     Did Mr. Caldwell tell you that Pillsbury represents  
4     him?

5             MR. FITZMAURICE:  Objection, Your Honor, relevance  
6     to the bank's ability to credit bid tomorrow.

7             THE COURT:  I'll sustain the objection as to  
8     relevance.

9     BY MR. CHOUDHURI:

10    Q     Are you aware that Mr. Caldwell signed an NDA?

11             MR. MURRAY:  Objection, form, foundation.

12             THE COURT:  I'll sustain the objection.

13    BY MR. CHOUDHURI:

14    Q     Did you ask Mr. Caldwell if he have any signed  
15    agreements or signed any agreements?

16             MR. FITZMAURICE:  Objection, as to scope, any  
17    signed agreements, with who, related to what?

18    BY MR. CHOUDHURI:

19    Q     Related to 2425 West Loop.

20    A     I don't believe I asked that particular question.  If I  
21    did, I don't remember it.

22    Q     So if -- so instead of investigating the claims against  
23    the Bank of Kuwait -- let me back up.  If there's an auction  
24    and there's a credit bid, whether the building sells for \$20  
25    million or \$40 million, the amount of money the unsecureds

1 get is the same.

2 MR. MURRAY: Objection, opinion. I renew my  
3 request for sanctions on repetitive questions on grounds --  
4 on objectionable grounds that have already been ruled on.

5 THE COURT: I'll sustain the objection. You  
6 already exceeded the scope of the redirect.

7 MR. CHOUDHURI: It was Paul Caldwell. It was  
8 limited -- it was limited to Paul Caldwell (indiscernible)  
9 go back to this document.

10 THE COURT: So you're getting very, very close to  
11 being sanctioned on Mr. Murray's motion. So you need to  
12 wrap it up because if you ask any more questions that I  
13 overrule, I am going to sanction you.

14 BY MR. CHOUDHURI:

15 Q So in this meeting, Mr. Caldwell tells you he recalls a  
16 conversation with Choudhri in February 2023 about the bank's  
17 status regarding declaring default, right?

18 A What are you asking me? If that happened in the  
19 conversation or what the document says?

20 Q If that happened in the conversation.

21 A I don't -- I don't remember that that  
22 (indiscernible) --

23 MR. CHOUDHURI: No further questions.

24 THE COURT: All right. Thank you.

25 Mr. Burks, anything further?

1 MR. BURKS: No evidentiary questions, Your Honor.

2 Thank you.

3 THE COURT: Mr. Fitzmaurice?

4 MR. FITZMAURICE: None, Your Honor.

5 THE COURT: Sir, you may step down.

6 Mr. Choudhri, do we have another witness?

7 MR. CHOUDHURI: I believe Mr. Ingram is on. I  
8 just want to make sure.

9 THE COURT: Mr. Ingram is on the phone, it looks  
10 like. He's not on video.

11 MR. CHOUDHRI: Mr. Ingram, can you hear me?

12 THE COURT: He can now. There he is. Hold on for  
13 one second.

14 Mr. Ingram, can you hear us now? I can't hear  
15 you. You must be muted on your end.

16 MR. INGRUM: All right. There we go. Now you can  
17 hear me.

18 THE COURT: Now I can't see you, unfortunately.  
19 There you are.

20 MR. INGRUM: There I am.

21 THE COURT: All right. I'll remind you Mr.  
22 Ingram, that your still under oath.

23 MR. INGRUM: Yes, sir.

24 THE COURT: Go ahead and ask your question.

25 DIRECT EXAMINATION OF RUSSELL INGRUM

1 BY MR. CHOUDHURI:

2 Q Mr. Ingram, do you recall being in the state court  
3 sometime in 2023 on a matter related to the National Bank of  
4 Kuwait?

5 A Yes.

6 Q And do you recall that there were a couple of parties,  
7 buyers that were interested in -- let me back up.

8 MR. TROOP: Your Honor, can we move the screen --

9 THE COURT: Oh, sure. Sorry. I apologize.

10 MR. TROOP: Thank you.

11 BY MR. CHOUDHURI:

12 Q Mr. Ingram, do you recall being at a hearing with the  
13 National Bank of Kuwait in state court related to 2425?

14 A I never got into the court. I was kept outside and  
15 never stepped inside.

16 Q Right, but you came to court and I think there was like  
17 they wanted to excuse or call, make the witnesses leave or  
18 something, go outside. Do you remember that?

19 A Yes.

20 Q And do you recall your purpose of coming to court or  
21 what kind of -- what the purpose of coming to court was as  
22 it relates to 2425 and the process to sell 2425?

23 MR. FITZMAURICE: Objection, Your Honor, relevance  
24 is to --

25 THE WITNESS: I honestly do not recall what the

1     purpose was.

2                 THE COURT: Hold on, what's the objection?

3                 THE WITNESS: Okay.

4                 MR. FITZMAURICE: Whatever reason Mr. Ingram was  
5     in state court a year ago has no relevance to the bank's  
6     ability to credit bid at the auction tomorrow.

7                 THE COURT: Mr. Choudhri, I'll let you respond to  
8     that.

9                 MR. CHOUDHURI: I'll withdraw my question, Your  
10    Honor.

11                THE COURT: All right. Go ahead.

12    BY MR. CHOUDHURI:

13    Q     Mr. Ingram, would you describe how a sales process is  
14    affected by a credit bid?

15                MR. FITZMAURICE: Objection, Your Honor, asking  
16    for expert opinion evidence on an issue that Your Honor has  
17    already ruled on several times today.

18                THE COURT: I'll sustain the objection. Thank  
19    you.

20    BY MR. CHOUDHURI:

21    Q     Mr. Ingram, would you consider yourself to be an expert  
22    in the office building sales area?

23                MR. FITZMAURICE: Your Honor, whatever the answer  
24    to that question is, Mr. Ingram has not been identified as  
25    an expert in connection with this proceeding. He's

1     incapable of --

2                 THE COURT:  I'll sustain the objection.  If he  
3     hasn't been designated as an expert, he can't testify as an  
4     expert.

5                 MR. CHOUDHURI:  I guess (indiscernible) --

6                 THE COURT:  If you had designated him, I'd love to  
7     see him.

8                 THE WITNESS:  Do I answer?  Do I not answer?

9                 THE COURT:  You wait until I tell you to answer  
10    the question.  Thank you.

11                THE WITNESS:  Okay.  Thank you.

12                MR. CHOUDHURI:  Your Honor, I think that he may  
13    have been designated as an expert at our earlier hearing.  
14    And I'm not sure if he was (indiscernible) --

15                THE COURT:  Nothing in front of me indicates he's  
16    been designated as an expert.  So unless you can show me  
17    something, he can't testify as an expert, end of story.  So  
18    do you have another question to ask him?

19    BY MR. CHOUDHURI:

20    Q     Mr. Ingram, are you familiar with 2425 West Loop?

21    A     I am familiar with the office, yes.

22    Q     Have you been to the building?  Have you toured it?

23    A     I have.  I have.

24    Q     And what would a normal marketing --

25                MR. CHOUDHURI:  I see you rolling your eyes.  I'll



1     just withdraw. I'll pass the witness, Your Honor. I don't  
2     want to frustrate you anymore.

3             THE COURT: Okay. Thank you.

4             Mr. Ingram, I don't think there's going to be any  
5     more testimony for you, but I'll go around and ask anyone.

6             Mr. Burks, do you have any questions for Mr.  
7     Ingram?

8             MR. BURKS: None, Your Honor.

9             MR. FITZMAURICE: None, Your Honor.

10            THE COURT: All right. Then you're excused, sir.  
11     Thank you for appearing.

12            Mr. Choudhri, next witness. Mr. Choudhri, next  
13     witness.

14            MR. CHOUDHRI: Your Honor, I have some tenants  
15     that wanted to. But if the court is not inclined to listen  
16     to that evidence --

17            THE COURT: I'm not sure that your tenants can  
18     give me any relevant information relative to credit bidding.

19            MR. CHOUDHRI: The only relevance that I would  
20     demonstrate for Your Honor is that these are ready and  
21     willing tenants willing to come in and the values  
22     (indiscernible) but the values are (indiscernible) depressed  
23     so a credit bid can take place (indiscernible) motivation  
24     and bad acts of the bank have not wanted to approve leases  
25     and just the historical fact. But if the court would not

1 listen to that, then (indiscernible) --

2 THE COURT: I don't think they can provide me any  
3 sort of information that I would need. Thank you. All  
4 right, do you have anyone else you want to call?

5 MR. CHOUDHURI: (indiscernible) just to talk to my  
6 --

7 THE COURT: You don't get to talk to anyone.  
8 You're representing yourself. Do you have any other  
9 witnesses you want to call?

10 MR. CHOUDHRI: I don't.

11 THE COURT: All right. Thank you. Then we'll  
12 take it you rest.

13 All right. Let me go over to NBK. Do you have  
14 witnesses you want to call? Tell me what you want to do.

15 MR. TROOP: Your Honor, I think at this moment in  
16 time, it's appropriate to make a motion.

17 THE COURT: All right.

18 MR. TROOP: The motion is under Bankruptcy Rule  
19 7052, made applicable to this contested matter by Bankruptcy  
20 Rule 1114. Your Honor, I'm going to be as brief as I can  
21 be. We have been through a lot today. You laid out for the  
22 movants six things on which they needed to present evidence  
23 to convince you that there was cause to prohibit credit  
24 bidding, and not to be too cheeky about it, Your Honor, what  
25 you heard today was a number of witnesses trying to tell you

1     that based on what they were told by Mr. Choudhri, there are  
2     claims. The movants here put on not one single percipient  
3     witness, no one with personal knowledge, no one who could  
4     say there was an act that resulted in Y. What you heard was  
5     a lot of speculation about potential claims, again from a  
6     single source, who no one put on the stand.

7             Your Honor, there's a complete failure of proof  
8     here with regard to a demonstration of cause to prohibit  
9     credit bidding. What there is, however, Your Honor, is  
10    there is admissible evidence with regard to why, as a matter  
11    of law, the claims can't be pursued. And there's also  
12    credible evidence as to the exercise of the trustee's  
13    independent judgment as to why he, in making his own  
14    credibility assessments, determined not to pursue a claim  
15    against NBK.

16            And Your Honor, while I know you can read the  
17    documents themselves and the final cash collateral order  
18    itself, to be clear, Your Honor, there are five or more  
19    stipulations in Section 3 of the cash collateral order.  
20    There's one which is subject to the challenge period, which  
21    has to do with amount, validity and equitable subordination.  
22    There's one that has to do with perfection, which is not  
23    subject to the challenge period. And regardless, Your  
24    Honor, it is clear that once the challenge period ends,  
25    everyone's bound by those stipulations.

1           Your Honor, I may disagree with you on your  
2    decision with regard to the motion to strike the objections.  
3    But Your Honor, what you didn't rule then and what's  
4    applicable now is that with the challenge period having  
5    expired and no act of a trustee having been taken, all of  
6    those stipulations are binding on the parties. You ruled  
7    they could object, and they did. But that doesn't mean the  
8    estate can't settle. That doesn't take the trustee's  
9    ability away, his control, his ability to resolve, settle,  
10   use, sell property, resolve under 1919 (indiscernible) by  
11   the final cash collateral order, and that's what happens  
12   here on a legal side, on the legal barrier side.

13           But again, Your Honor, I go back to the  
14   fundamental point on the factual side. I don't need to talk  
15   about the facts. I don't need to talk about the details.  
16   It's because there wasn't a single percipient witness. The  
17   parties didn't carry their burden. And when you put this  
18   all together, Your Honor, there should be not another hour  
19   spent on this.

20           The credit bidding motion should be denied and you  
21   should exercise your prerogative under Bankruptcy Rule 7052  
22   and 9014 to do that now and not require the National Bank of  
23   Kuwait to put up a case at this point in time. Thank you,  
24   Your Honor.

25           THE COURT: All right. Thank you. I'll let Mr.

1 Burks respond to that and then I'll also let Mr. Choudhri  
2 respond to that.

3 MR. BURKS: That would be a home run if an order  
4 authorizing cash collateral releases it from liability of  
5 the claims that have been filed. Don't take my word for it.  
6 Don't take Mr. Choudhri's word for it. Take Mr. Jerry  
7 Alexander's word for it.

8 So here's the evidence. You took in a long time  
9 ago. I thought this hearing was over, Judge, and I thought  
10 the hearing was over because I thought that what the  
11 judge -- what Your Honor would be ruling is that credit  
12 bidding above 18.6 with the cap is prohibited and the reason  
13 I thought that was I read Flowers v. Sherman District Court  
14 out of the Northern District of Texas. I read Morgan  
15 Stanley Dean Whitter v. Almond out of the district court in  
16 the Northern District of Texas. I read CS Mining Company  
17 bankruptcy decision out of Utah, all cited in the brief.

18 The facts in those cases which disallowed credit  
19 bidding don't say that you determine -- you tried  
20 litigation. You determine if there's a bona fide dispute.  
21 I didn't know how bona fide this dispute was until I just  
22 heard a motion from NBK's counsel saying, Judge, they've  
23 been released. Don't consider them. They were released in  
24 a cash collateral order despite the fact that you've already  
25 ruled that they weren't. They're released in a settlement

1     agreement, which is the subject matter of one of the  
2     lawsuits. So Judge, don't determine the lawsuit, don't hear  
3     the lawsuit, don't hear evidence. Simply rule that a credit  
4     bid can be allowed because there is no bona fide dispute.

5             But don't take my word for it. The evidence that  
6     he's ignoring is Jerry Alexander. Jerry Alexander is an  
7     attorney. If you look at ECF 232-2, he's, in my opinion,  
8     the best lender liability attorney in the state of Texas.  
9     The best reputation, the best. He was one of the state bar  
10    nominees for president in 2023. He is highly regarded by  
11    his peers. Everyone who knows this man knows that he got an  
12    \$18.1 million judgment three years ago in front of Judge  
13    Jordan on lender liability. He's the man that if you have a  
14    lender liability question, you call him.

15            Jerry Alexander thinks as much. He said it's a  
16    great case. That's why I'm going to take it on a pure  
17    contingency. Look at the allegations that are in the  
18    lawsuit regarding the enforceability of the settlement  
19    agreement. Jeff Steidley got on the stand and he said he  
20    likes the case. He wants to bring the case. He's taking it  
21    on a strict contingency fee.

22            There are disputes. They don't want you to hear  
23    them. They don't want you to consider them. But the  
24    evidence is Exhibits 2 through 9, 10, which you took into  
25    evidence, and the testimony of Jerry Alexander and Jeff

1 Steidley.

2 But there's also something that we're all  
3 forgetting about. It happened way back a long time ago.  
4 Maybe it was in another galaxy or universe, but certainly in  
5 a different time zone. And it was when the very first  
6 witness of this case told you that NBK values the property  
7 at somewhere around 18.6 and NBK has a claim of about \$70  
8 million. In other words, by credit bidding up to \$70  
9 million, they can move well above any buyback in the plan.  
10 They can move at a true auction.

11 This court has, in three orders issued in this  
12 court, said the most important thing to this court is to  
13 have a true auction bid to determine the value of this  
14 property. The reason why the three cases I've cited  
15 prohibited auction credit bids is because credit bids don't  
16 facilitate. How do I know that? Well, a lot of judges in  
17 these opinions think that, that they do not facilitate a  
18 fair market value determination. But here's something that  
19 interests me. It was tortured. It was long. It was  
20 difficult. But at Document Number -- at ECF 463-2, that  
21 April 2023 letter from R.J. Shannon to the NBK legal team  
22 says, I really want, for the benefit of everybody, I really  
23 want a cap on credit bidding. And there isn't one.

24 Maybe the old adage of something about if you get  
25 too greedy, you don't get anything. I don't know if that

1 applies here. But that cap should have been there and it's  
2 not. There is no way to know exactly what the damages  
3 models are going to be without trying the cases. You don't  
4 shut down the case and you don't allow credit bid when there  
5 are this many disputes because one thing we do know, I've  
6 never seen an individual more impassioned than Mr. Choudhri.  
7 And I have never seen a presentation by professional  
8 attorneys as impassioned, begging this court to rule that  
9 these causes of action have been released and do not  
10 consider them. Don't say they're bona fide disputes.

11 I'm new to this case so maybe I should have been  
12 used to such passions. I'm a passionate man myself. But,  
13 Judge, the question in the case law is are there disputes.  
14 Do you even know that the NBK claim is going to be  
15 disallowed at all? They have the cash. Let them cash bid  
16 if they want. Let them be the winning cash bidder. Thank  
17 you. The evidence, I've outline what it is. I'm not going  
18 to repeat it. Two witnesses, ten exhibits. Thank you,  
19 Judge.

20 THE COURT: Thank you.

21 Mr. Choudhri?

22 MR. CHOUDHRI: Your Honor, I'd like to point you  
23 to ECF 464. It's a motion for contempt and it's got  
24 exhibits on there. And it was a deposition for credit bid  
25 motion, or for the credit bid hearing so we could ask



1 questions. And when you read Mr. Carter's deposition, Your  
2 Honor, in ECF 464 and the 30(b)(6) notice that happened, six  
3 topics that were not objected to, Mr. Carter couldn't answer  
4 any questions. He refused to.

5 MR. FITZMAURICE: Your Honor -- Your Honor knows  
6 this, but that motion was denied.

7 THE COURT: It was, and I'm going to let him  
8 argue. But --

9 MR. CHOUDHRI: This is argument, I thought.

10 THE COURT: Yeah. It is. Go ahead.

11 MR. CHOUDHRI: So Your Honor, this should be a  
12 fair fight. One of the exhibits shows, if I can find it,  
13 the Bank of Kuwait attaches a PowerPoint for a 30-, 60-page  
14 document with all the key people at the Bank of Kuwait. And  
15 those are the people that were compelled to be deposed, that  
16 they get deposed. Mr. Carter has no knowledge of the credit  
17 bid, the plan. But the night before Monday, he signs a 120-  
18 page declaration. This hide and seek, this hide the ball,  
19 it should be transparent, information should be free-flowing  
20 so Your Honor can have a whole picture.

21 As we sit here today, Your Honor, this claim is  
22 disallowed unless and until it's allowed. They should not  
23 get the benefit. The burden is on them to do what they need  
24 to do. They haven't. The market test -- to come in here  
25 and say that cash collateral releases them without allowing

1 other creditors or an auction or a 9019 or a sale process to  
2 liquidate a claim or allow it to be market tested is unfair.  
3 It is basically a fox guarding the henhouse and the  
4 motivations are misaligned. There is no -- there is no good  
5 reason to not lease up a building. There is no good reason  
6 to only have a few weeks of marketing. There is no good  
7 reason to have a phone number that doesn't go anywhere and  
8 discovery tells -- attempting to get discovery, it's been  
9 stymied or stopped.

10 The claims against the Bank of Kuwait are the  
11 largest, is the largest asset in this bankruptcy and it  
12 should be market tested. If the Bank of Kuwait wants to pay  
13 for those, do a 9019 and others can show up, like the Sonder  
14 issue and bid more and want to buy more, then that's  
15 something that should be done and can be done. But to allow  
16 the asset that is necessary to reorganize and maximize the  
17 estate so one creditor can take advantage I think is  
18 completely unfair.

19 There's an exhibit, if I can -- Mr. Troop's  
20 supplemental exhibits I believe attaches images of the  
21 individuals at the Bank of Kuwait and it talks about how  
22 many hundreds of billions of dollars. The Bank of Kuwait,  
23 if they want to buy this property, they should be able to  
24 bid on it like anybody else, and if they're disqualified  
25 then they should be capped at their stalking horse bid.

1     Anything above that, they should have to pay for it. Even  
2     the stalking horse and even the credit bid up to the  
3     stalking horse, I disagree with. But it should be a fair  
4     fight, and it should be a true market test. And when you  
5     have -- so to back up a little bit, Your Honor, there is a  
6     lot here, there is a lot of evidence and that evidence is  
7     not here to try the entire case against the Bank of Kuwait  
8     today. And there is a colorable dispute. It's a bona fide  
9     dispute. Obviously there's two sides to every story.

10           But one of the things that bothered us in the  
11     beginning was a release of the claims against NBK without a  
12     market test. That should happen first, and as we sit here  
13     today, the claim is disallowed. So they should not get the  
14     benefit of it because what if it's found that they have no  
15     claim? In fact, it goes the other way, that the claims --  
16     the last question that I asked Mr. Murray before I passed,  
17     he said, yes, there are legitimate claims against the Bank  
18     of Kuwait. The trustee said that. And the trustee also  
19     said the claims have not been released against the Bank of  
20     Kuwait. But Mr. Troop says they are released. And as we  
21     sit here right now, the claim is objected to and it's  
22     disallowed.

23           When, and if Your Honor would entertain a summary  
24     judgment or a quick hearing on the adversary that's been  
25     removed and the only reason the motion to remand was filed

1     because of the venue provision selected by Mr. Conrad in the  
2     settlement agreement between Mr. Wetwiska and Mr. Conrad was  
3     Harris County District Court. That's a gateway issue. One,  
4     do they own the note? What if it's later decided the claims  
5     or ownership and then this court has allowed them to credit  
6     bid on an asset and it's later found that they don't have  
7     standing and it creates a conundrum.

8             So obviously we'll respect whatever Your Honor  
9     does. I would just ask Your Honor to disallow the credit  
10    bid. There's no dispute that there's a dispute and compel  
11    or re-urge to compel.

12            Your Honor, if you read the deposition of Mr.  
13    Carter, it is astounding that that's the corporate  
14    representative and he has misrepresented and not been  
15    truthful. And if the court would allow, we can provide a  
16    brief on the statements in this court and other courts and  
17    testimony.

18            MR. FITZMAURICE: Your Honor, I understand this is  
19    argument. He's calling our witness a liar without any  
20    support or foundation or evidence. I understand this is his  
21    argument and he has his --

22            THE COURT: I'm going to (indiscernible) that's  
23    fine. Please sit down.

24            Go ahead. I want to hear what you have to say.  
25    Go ahead.

1           MR. CHOUDHRI: Your Honor, in this case, if you  
2   heard all the evidence and all the facts as it goes to the  
3   issue of the dispute, my understanding is we're not here to  
4   resolve the dispute because that is lots of witnesses. A  
5   trial on the claims between the Bank of Kuwait and the  
6   counterparties.

7           But one thing is undisputed between myself and the  
8   trustee is that there are legitimate claims against the Bank  
9   of Kuwait. Trustee Murray said that in his last answer. So  
10   to allow the Bank of Kuwait to go forward and benefit from  
11   their actions and credit bid would be an injustice. The  
12   Bank of Kuwait has plenty of funds to bid and pay for the  
13   property if they want to buy the property. And the claim  
14   against the Bank of Kuwait should be auctioned or market  
15   tested.

16           Your Honor, I also want to say that there's some  
17   post-hearing briefing that I can demonstrate to you that  
18   everything I have represented to you is not just  
19   accusations. It has facts behind it and evidence. There  
20   has been lots of misrepresentations to Your Honor in this  
21   case, and it ricochets. If somebody says something that's  
22   not true, it ricochets in other places and it creates a  
23   domino effect. And unless you stop that, it keeps going.  
24   People keep getting rewarded for their behavior and they're  
25   going to keep benefiting from it. That's all I have to say,

1 Your Honor.

2 THE COURT: All right. Thank you. All right. So  
3 here's what I'm going to do. What I have before me is a  
4 motion to prohibit credit bidding, which is ECF 353, and the  
5 objection of National Bank of Kuwait, which is at Docket  
6 Number 455. The National Bank of Kuwait has basically asked  
7 me to make a directed verdict, and so based on their motion,  
8 I am going to grant their motion and I'll enter a specific  
9 order that everyone can take to their clients and read, and  
10 I'll do that between now and hopefully midnight tonight.

11 But let me make the following comments for the  
12 record so that the parties know why I'm going to come down  
13 the way I'm going to come down. 363(k) gives a right to  
14 credit bid. The only way I can basically not allow credit  
15 bidding is if I find cause.

16 Okay. I'll turn to what the parties said when  
17 they first opened their case some ten hours ago, ten and a  
18 half hours ago. Mr. Choudhri said I would be astonished at  
19 the evidence and that I would find evidence that there's  
20 been a fraud on the court. I'm afraid Mr. Choudhri hasn't  
21 really met that burden. I'm not sure that's a burden he has  
22 to meet. But certainly I wasn't astonished, and I certainly  
23 haven't found any sort of fraud on the court.

24 Mr. Troop said that there were -- the claims of  
25 Mr. Choudhri were implausible. I think he said that the

1 claims are implausible. I'm not sure that I agree with that  
2 fully. However, I do agree with the trustee's credibility  
3 judgment as to the nature of those claims. I don't have any  
4 questions or reasons to doubt it, and I think that given the  
5 trustee's credibility judgment, I can find that, based on  
6 the evidence that I've heard relative to the specific issues  
7 that I mentioned, I didn't really hear any credible evidence  
8 that NBK has no interest in the property. I really didn't  
9 find or hear any credible evidence about the breach of NBK  
10 by the settlement agreement or even the court's -- the state  
11 court extension to July 3, 2023 of the payment obligations.

12 I realize there are claim objections. I realize  
13 that there are disputes between the parties. But are they  
14 sufficient for the court to find cause so that NBK can't  
15 credit bid? I think the answer to that question is no. I  
16 think they should be allowed to credit bid, and I'm going to  
17 enter an order to that effect, and I'll do that as soon as I  
18 step down from the bench.

19 You'll have that by 9:00 tomorrow because, even if  
20 I write it tonight, I won't have staff until first thing  
21 tomorrow morning.

22 All right. We're adjourned until Wednesday at  
23 9:00 a.m. It is a federal holiday. You have to enter the  
24 courthouse by the far entrance where there is a button. You  
25 will need to push that button. Tell them you're here to

1     come into this courtroom and they will let you in.

2     Otherwise, the courtroom is closed. Thank you. I'll see  
3     you then.

4             What street is that on, judge? Is it on Rust?

5             THE COURT: It's on Rust.

6             MR. TROOP: And, Your Honor, just for everyone in  
7     the courtroom, I want to thank you, but not you so much. I  
8     want to thank your staff.

9             THE COURT: That's not necessary. They'll be paid  
10    to do this, believe it or not. Thank you.

11            MR. TROOP: Thank you, Your Honor.

12            (Proceedings adjourned at 7:35 p.m.)

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CERTIFICATION

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I certify that the foregoing is a correct transcript from  
the electronic sound recording of the proceedings in the  
above-entitled matter.

A handwritten signature in dark ink, reading "Sonya M. Ledanski Hyde". The signature is written in a cursive, flowing style. The first name "Sonya" is prominent, followed by the middle initial "M.", the last name "Ledanski", and the surname "Hyde".

Sonya Ledanski Hyde

Veritext Legal Solutions  
330 Old Country Road  
Suite 300  
Mineola, NY 11501

Date: June 24, 2024

## EXHIBIT 14

## CONTRACT AND AGREEMENT OF EMPLOYMENT

The undersigned, **HIRA AZHAR** hereinafter sometimes referred to as "Client" and **BOBBY K. NEWMAN, P.C.** and **LILLY, NEWMAN & VAN NESS, L.L.P.** sometimes hereinafter referred to as "Firm," hereby enter into the following Contract and Agreement regarding Firm's representation of Client in a single family law related matter: A divorce action in Harris County Texas. Client understands and has been advised that client's husband has alleged that there is a valid and binding divorce granted in Pakistan. Client understands that if such divorce is determined to be valid and is not set aside in Pakistan, it may preclude jurisdiction being valid for the divorce in Texas.

I. Client asserts the following representation and understandings regarding employment of Firm in this case:

- a. The date of employment of Firm is the date on which Client executes this contract or the date that this contract is executed by **Bobby K. Newman, or John Van Ness**, whichever is later.
- b. Client HAS AGREED TO PAY A TRUST DEPOSIT OF **\$50,000.00** OF WHICH **\$50,000.00** IS NON-REFUNDABLE ENGAGEMENT FEE. CLIENT UNDERSTANDS AND IT HAS BEEN EXPLAINED TO CLIENT THAT FIRM MUST FOREGO OTHER CASES TO TAKE CLIENT'S CASE AND THAT IS THE REASON **\$50,000.00** OF THE TRUST DEPOSIT IS A NON REFUNDABLE ENGAGEMENT FEE. HOWEVER, FIRM WILL CREDIT SUCH MINIMUM CASE FEE AGAINST TIME EXPENDED ON THIS CASE.
- c. NO REPRESENTATIONS HAVE BEEN MADE BY FIRM AS TO THE ULTIMATE SUCCESS OF THE CASE AND THE ONLY MATERIAL REPRESENTATIONS MADE BY FIRM TO CLIENT IS THAT IT WILL EXERT ITS BEST PROFESSIONAL EFFORTS IN ITS REPRESENTATIONS OF CLIENT. THERE WILL BE NO REFUND TO CLIENT OF THE ATTORNEY FEES, COSTS OR EXPENSES INCURRED BY CLIENT IN THIS CAUSE OF ACTION.
- d. Client fully understands that in the event any monies are recovered and actually received from the opposing party, by either the Client or the Firm, such monies shall



first be tendered to the Firm to be credited against any unpaid fees, costs, and/or expenses due Firm by Client with any remaining overage then being paid to Client.

- e. Client fully understands that this instrument represents a contract for services rendered and to be rendered by Firm and that such services are conditioned upon the terms of this agreement, including but not limited to payment of attorney fees to Firm in accordance with the fee schedule and other fee terms as set forth herein below.
- f. Client fully understands and hereby states that Firm has no responsibility or liability of any nature for any actions, occurrences, matters of concern or interest in this cause preceding the date of execution of this Agreement.
- g. Client fully understands that the minimum case fee as stated herein is absolutely vested to **Lilly, Newman Van Ness, LLP** upon execution of this Agreement and is non-refundable.
- h. Client fully understands that an additional cost expense deposit of **\$1,000.00** is to be paid simultaneously with the execution of this contract and held in trust to be used for the payment of costs and expenses incurred in the representation of Client by Firm. Any monies so deposited and not expended shall be refunded to Client at the close of the case, less any outstanding attorney's fees, costs, and expenses owing the Firm. By execution of this contract, Client hereby authorizes the Firm to pay any out-of-pocket expenses incurred by the Firm in the handling of this case out of the cost expense deposit. Client further understands and agrees that when and if the tendered cost/expense deposit has been extinguished, Client shall, upon thirty (30) days written demand by the Firm, remit to the Firm an additional cost/expense deposit.
- i. Client fully understands that at such time as the minimum case fee referred to in paragraphs l.b. and l.g. above and the cost/expense deposit referred to in paragraph l.h. above have been expended, Client shall be required to pay (and Client hereby agrees to pay) all current monthly balances with Firm in accordance with the monthly billing.
- j. **TRIAL DEPOSIT:**

Client fully understands that prior to the 15<sup>th</sup> day of the month prior to the month in which a trial of this cause of action is set, unless other arrangements are specifically made in writing, All past due or billed and unpaid fees and expenses must be brought current and a trial deposit to be made in an amount determined by multiplying Bobby K. Newman's hourly rate by the number of hours estimated by Bobby K. Newman to be necessary to prepare for trial and try the case. To the extent the trial deposit made pursuant to this paragraph is not used will be returned.

- k. Client understands and acknowledges that the fees charged by **Bobby K. Newman, P.C.** and **Lilly, Newman & Van Ness, LLP** are high but states that, in Client's opinion, such fees are "reasonable."
- l. Client fully understands that Firm may withdraw from representation in the event Client:
  - 1. insists upon presenting a claim or defense not warranted under existing law and/or claims or defense that cannot be supported by a good faith argument for extension or reversal of such law;
  - 2. personally seeks to pursue an illegal course of conduct;
  - 3. insists that the Firm pursue a course of conduct which is illegal or prohibited under the disciplinary rules;
  - 4. by other conduct renders it unreasonably difficult for the Firm to carry out employment;
  - 5. insists upon the Firm engaging in conduct which is contrary to the judgment or advice of the attorneys;
  - 6. disregards the agreement with Firm as to the payment of fees, costs or expenses as set forth herein;
  - 7. fails to keep the Firm fully informed of any change of Client's residence address or telephone number or change of employment and work telephone number;
  - 8. fails to timely remit additional cost expense deposits as per paragraph "h" as set out herein above.

11. Firm asserts the following as its understanding of the Contract and Agreement between Firm and Client:

- a. The terms of this instrument reflect the entire agreement between Firm and Client and there have been no promises or assurances other than as contained in this Agreement.
- b. Firm and all members will conduct themselves at all times in connection with this cause in keeping with professional standards and will exert its best professional

efforts to reach the most desirable results in perfecting the legal claims and rights of Client in connection with this cause of action.

- c. Firm has not accepted employment in this cause until the date of execution of this Agreement by Bobby K. Newman, P.C. and/or Lilly, Newman Van Ness, LLP.
- d. The time heretofore expended in consultation and telephone communications will be carried over and included in this total amount of time expended in connection with this cause as provided for in the following fee schedule.

### III. FEE SCHEDULE

Firm and Client understand and hereby agree that the following fee schedule shall apply as an absolute condition of employment of Firm by Client. Client understands that the total amount of fees incurred in Firm's representation of Client may well exceed the minimum case fee paid by Client. By execution of this contract, Client accepts full responsibility for the timely payment of any and all amounts due Firm for legal services rendered by Firm over and above the minimum case fee pursuant to the following fee schedule and this contract, if, in fact, the minimum case fee is exceeded:

- a. All time expended in connection with this cause shall be charged at the rate as set forth herein below.

This includes, but is not limited to, telephone conversations, interviews with Client or other parties in connection with this cause, legal research time, legal drafting of instruments, preparation for Court, review of correspondence and documents, and miscellaneous time spent in office practice in connection with this cause and/or legal investigation in connection with this cause. All time spent in court room attendance, whether in actual trial of this cause, or at ancillary hearings or motions, including but not limited to, motions for contempt, motions for judgment, or other motions for ancillary relief, and travel time to and from such hearing.

- b. All out-of-pocket expenses, if any, incurred by Firm in connection with Client's case are billed as separate items on Client's statement. Additional details on expenses will be provided upon request. Invoices for individual expenses, including but not limited to filing costs, subpoena costs, transportation costs, printing/copying costs, investigation/expert costs, accounting costs, and all other miscellaneous actual expenses may be sent to you from time to time for immediate payment direct to the respective suppliers. As your attorneys, on specific matters, you have authorized and empowered us to do whatever is necessary and appropriate, in our professional judgment, to represent you properly and to incur such costs and expenses as are reasonably necessary to handle your matter properly, including the authorization and power to associate or employ such other persons or entities as we may deem

necssary to assist us, such as support services, technical experts, or other attorneys (usually "local counsel" in a distant forum) who are not members of the Firm. Expenses relative to deposition testimony taken and/or transcripts received of any depositions taken with respect to this cause of action will be billed directly to you by the court reporter pursuant to a Determination of Liable Party agreement to be executed by you and provided to each court reporter prior to our appearance at any deposition in this cause of action.

- c. All time will be recorded in minimum units of three-tenths (.3) of an hour even though the time spent may be less than three-tenths (.3) of an hour.
- d. All accounts are due and payable in Harris County, Texas, and the unpaid balance of fees owed to the Firm as well as expenses advanced on behalf of the Client shall bear interest at the rate of ten percent (10%) per annum commencing thirty (30) days after the date of the occurrence of the fee or expense so advanced. Such interest shall appear on each statement.
- e. THIS CONTRACT AND AGREEMENT DOES NOT INCLUDE PRESENTATION OF THIS CASE TO ANY APPELLATE COURT OR THE FILING OF EXTRAORDINARY WRITS INCLUDING BUT NOT LIMITED TO WRITS OF HABEAS CORPUS, WRITS OF MANDAMUS, WRITS OF PROHIBITION, ETC., AND IN THE EVENT THAT AN APPEAL OR THE FILING OF EXTRAORDINARY WRITS IS NECESSITATED, CLIENT AND ATTORNEY WILL CONSIDER THAT MATTER AS A SEPARATE AND DISTINCT CAUSE OF ACTION AND A NEW AND DISTINCT FEE ARRANGEMENT WILL CONTROL IF, IN FACT, ATTORNEY AND CLIENT ARE MUTUALLY DESIROUS OF CONTINUING AN ATTORNEY/CLIENT RELATIONSHIP.

#### IV. INDEMNIFICATION

Client hereby understands and agrees that Client is solely responsible for the payment of any and all costs and expenses incurred by Firm in the adequate and proper handling of Client's case which may become due and payable to court reporters, private investigators, accountants, expert witnesses, consulting experts, and/or civil process servers. Client further agrees and understands that it is Client's responsibility to pay any and all of said above costs and expenses as they become due direct to any such court reporter, private investigator, accountant, expert witness, consulting expert,

and/or civil process server performing such said services. Client understands and agrees that Firm is neither liable nor responsible for the payment of any costs and/or expenses as referenced hereinabove.

**V. RATES OF ATTORNEYS AND STAFF**

Firm and Client understand and agree that, from time to time, during the pendency of the matter which is the basis of this contract and agreement of employment and the Firm/Client relationship, the Firm may deem it necessary to use the services of legal assistants, paralegal employees or other associates, and Client agrees that use of such is acceptable to him and that all work performed by assistants selected by Bobby K. Newman shall be fully supervised by Bobby K. Newman, and that the periodic time spent, if any, by lawyers and/or law clerks shall be billed at the following rates:

BOBBY K. NEWMAN	\$600.00	PER HOUR
EARLE LILLY	\$600.00	PER HOUR
JOHN VAN NESS	\$550.00	PER HOUR
SENIOR ASSOCIATE ATTORNEY	\$325.00	PER HOUR
ASSOCIATE ATTORNEY	\$275.00	PER HOUR
LAW CLERKS	\$150.00	PER HOUR
SENIOR PARALEGAL	\$175.00	PER HOUR
PARALEGALS	\$150.00	PER HOUR

**VI. MISCELLANEOUS**

FOR ALL CASES PENDING IN HARRIS COUNTY, TEXAS:

A. CLIENT ACKNOWLEDGES RECEIPT OF THE HARRIS COUNTY LOCAL RULES AND UNDERSTANDS CLIENT HAS A DUTY TO PRODUCE THE DOCUMENTS AS SET OUT IN THE HARRIS COUNTY LOCAL RULES.

B. CLIENT FURTHER UNDERSTANDS THAT CLIENT NEEDS TO TAKE A



PARENTING EDUCATION CLASS APPROVED BY THE COURT PRIOR TO THE FINAL TRIAL.

C. At the conclusion of your legal matter, you may have the contents of your file other than the personal notes, briefs, and other work product deemed necessary to be retained by the firm. If you choose to leave all or part of your file in the possession of the firm, the firm shall have the authority to destroy your file after three (3) years from the conclusion of your case.

D. The State Bar of Texas investigates and prosecutes professional misconduct committed by Texas attorneys. Although not every complaint against or dispute with a lawyer involves professional misconduct, the State Bar's Office of General Counsel will provide you with information about how to file a complaint. Please call 1-800-932-1900 toll-free for more information.

## **VII ARBITRATION**

**CLIENT AND FIRM AGREE THAT ANY DISPUTE WHATSOEVER ARISING OUT OF THIS AGREEMENT OR SERVICES PROVIDED BY FIRM WHETHER IN CONTRACT OR TORT IS SUBJECT TO BINDING ARBITRATION.**

Any and all disputes, controversies, claims or demands arising out of or relating to the Agreement or any provisions hereof, the providing of services by Attorneys to Client, or in any way relating to the relationship between Attorneys with Client, whether in contract, tort or otherwise, at law or in equity, for damages or any other relief, shall be resolved by binding arbitration pursuant to the Federal Arbitration Association. Any such arbitration proceedings shall be conducted in Harris County, Texas. This arbitration provision shall be enforceable in either federal or state court in Harris County, Texas pursuant to the substantive federal laws established by the Federal Arbitration Act. Any party to any award rendered in such arbitration proceeding may seek a judgment upon the

award and that judgment may be entered by any federal or state court Harris County, Texas having jurisdiction.

SIGNED this 22nd day of June, 2015.

  
\_\_\_\_\_  
**HIRA AZHAR**

  
\_\_\_\_\_  
**OMAR KHAWAJA**  
**ATTORNEY FOR HIRA AZHAR in the**  
**negotiation of this contract**

**LILLY, NEWMAN, VAN NESS, L.L.P.**

BY:   
\_\_\_\_\_  
**Bobby K. Newman**

Date: 6/22/15

## EXHIBIT 15

**Additional  
Discharge Information**

Ali Choudhri

**Date of Birth:** 1/24/1980

**CSN:** 2100178458317

The information in this after visit summary is up to date as of: 6/3/24 12:58 PM.

**MyChart**

This After Visit Summary Discharge Instructions Document is available in MyChart.  
Questions/Problems accessing your MyChart please call (832) 667-5694.

**Reason for Hospitalization**

Your primary diagnosis was: Stroke

**Procedures and tests performed during your visit**

CT Stroke Brain Wo Contrast LKN > 6 Hours  
ECG 12 lead  
ECG ED Preliminary Interpretation - Not an Order  
MRA Head Wo Contrast  
MRA Neck Wo Contrast  
MRI Brain Wo Contrast  
Transthoracic Echocardiogram Complete, (w Contrast, Strain and 3D if needed)

**Information for Referrals**

**Ambulatory referral to Occupational Therapy**

Ordering Provider: Cherian, Cecil, MD

**Occupational Therapy**

Specialty Services Required

Pending Authorization

Occupational Therapy

Services Requested: Evaluate and Treat

Primary Sub-Specialty: Neuro

**Ambulatory referral to Physical Therapy**

Ordering Provider: Cherian, Cecil, MD

**Physical Therapy**

Specialty Services Required

Pending Authorization

Physical Therapy

Services Requested: Evaluate and Treat

Primary Sub-Specialty: Neuro

**You are allergic to the following**

Date Reviewed: 6/3/2024

## You are allergic to the following (continued)

Date Reviewed: 6/3/2024

Allergen  
Iodine

Reactions  
Hives  
Shortness Of Breath

Shellfish Derived

Not Noted

## Current Immunizations

No immunizations on file.

## Patient Lines/Drains/Airways Status

### Active Drain / Line / Wound / Pressure Ulcer

Name	Placement date	Placement time	Site	Days	Last dressing change
Incision 01/18/19 Left Back	01/18/19	0851	Back	1963	
Incision 03/08/19 Back	03/08/19	0841	Back	1914	
Wound 10/09/22 Incision Abdomen	10/09/22	1652	Abdomen	603	

## Pending Labs

Order	Current Status
Comprehensive metabolic panel	Collected (06/02/24 1649)
Troponin T	Collected (06/02/24 1649)

## Information on Stroke

## Discharge I nstructions for Stroke

You have a high risk for a stroke, or a TIA (transient ischemic attack). During a stroke, blood stops flowing to part of your brain. This can damage areas in the brain that control other parts of the body. Symptoms from a stroke depend on which part of the brain has been affected.

### Stroke risk factors

Once you've had a stroke, you're at greater risk for another one. Listed below are some other factors that can raise your risk for a stroke:

- High blood pressure
- High cholesterol
- Cigarette or cigar smoking
- Diabetes
- Carotid or other artery disease
- Atrial fibrillation, atrial flutter, or other heart disease
- Not being physically active
- Obesity
- Certain blood disorders, such as sickle cell anemia
- Drinking too much alcohol
- Abusing street drugs
- Race
- Gender
- Family history of stroke
- Diet high in salty, fried, or greasy foods

### Changes in daily living

## **Information on Stroke (continued)**

Doing some everyday tasks may be hard after you've had a stroke. But you can learn new ways to manage. In fact, doing daily activities may help you to regain muscle strength. This can help your affected arm or leg work more normally. Be patient. Give yourself time to adjust. And appreciate the progress you make.

### **Daily activities**

You may be at risk of falling. Make changes to your home to help you walk more easily. A therapist will decide if you need an assistive device, such as a cane or walker, to walk safely.

You may need to see an occupational therapist (OT). Or you may see a physical therapist (PT). These healthcare providers can help you to learn new ways of doing things. For example, you may need to make changes in how you bathe or dress. You may also need a speech therapist. This is someone who helps you speak normally again and be able to swallow.

### **Tips for showering or bathing**

- Test the water temperature with a hand or foot that was not affected by the stroke.
- Use grab bars, a shower seat, a handheld showerhead, and a long-handled brush.
- Use any other device as advised by your therapists.

### **Tips for getting dressed**

- Dress while sitting, starting with the affected side or limb.
- Wear shirts that pull easily over your head. Wear pants or skirts with elastic waistbands.
- Use zippers with loops attached to the pull tabs.

### **Lifestyle changes**

- Take your medicines exactly as directed. Don't skip doses.
- Begin an exercise program. Ask your provider how to get started. Ask how much activity you should try to get every day or week. You can benefit from simple activities such as walking or gardening.
- Limit how much alcohol you drink.
- Control your cholesterol level. Follow your provider's advice about how to do this.
- If you are a smoker, quit now. Join a stop-smoking program to improve your chances of success. Ask your provider about medicines or other methods to help you quit.
- Learn stress management methods. These can help you deal with stress in your home and work life.

### **Diet**

Your healthcare provider will guide you on changes you may need to make to your diet. They may advise that you see a registered dietitian for help with changes. The changes can improve your cholesterol, blood pressure, and blood sugar. Changes may include:

- Reducing the amount of fat and cholesterol you eat
- Reducing the amount of salt (sodium) in your diet, especially if you have high blood pressure
- Eating more vegetables and fruits
- Eating more lean proteins, such as fish, poultry, and beans and peas (legumes)
- Eating less red meat and processed meats
- Using low-fat dairy products
- Limiting vegetable oils and nut oils
- Limiting sweets and processed foods such as chips, cookies, and baked goods
- Not eating trans fats. These are often found in processed foods. Don't eat any food that has hydrogenated oils listed in its ingredients.

### **Follow-up care**

- Keep your medical appointments. Close follow-up is important to stroke rehabilitation and recovery.
- Some medicines require blood tests to check for progress or problems. Keep follow-up appointments for

## Information on Stroke (continued)

any blood tests ordered by your providers.

### Call 911

Call 911 right away if you have any of the following symptoms of stroke:

- Weakness, tingling, or loss of feeling on one side of your face or body
- Sudden double vision or trouble seeing in one or both eyes
- Sudden trouble talking or slurred speech
- Trouble understanding others
- Sudden, severe headache
- Dizziness, loss of balance, or a sense of falling
- Blackouts or seizures

**B.E. F.A.S.T.** is an easy way to remember the signs of stroke. When you see these signs, you know that you need to call 911 fast.

**B.E. F.A.S.T.** stands for:

- **B** is for **balance**. Sudden loss of balance or coordination.
- **E** is for **eyes**. Vision changes in one or both eyes.
- **F** is for **face drooping**. One side of the face is drooping or numb. When the person smiles, the smile is uneven.
- **A** is for **arm weakness**. One arm is weak or numb. When the person lifts both arms at the same time, one arm may drift downward.
- **S** is for **speech difficulty**. You may notice slurred speech or trouble speaking. The person can't repeat a simple sentence correctly when asked.
- **T** is for **time to call 911**. If someone shows any of these symptoms, even if they go away, call 911 right away. Make note of the time the symptoms first appeared.

StayWell last reviewed this educational content on 6/1/2022

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## Information on Modified Rankin Scale



### Stroke Assessment Notice

Dear Patient,



### Information on Modified Rankin Scale (continued)

As part of Houston Methodist Hospital's efforts to evaluate the outcomes of our patients, you may be selected to receive a short phone call approximately 90 days after you are discharged home. This phone call will consist of an evaluation called the *modified Rankin Scale*. The *modified Rankin Scale* is a widely used assessment scale that evaluates the degree of disability or dependence during daily activities of people who have suffered a stroke.

This phone call will take approximately 5-7 minutes to complete and will include questions that pertain to your ability to work and engage in social and leisure activities.

If you are unable to participate, we will ask to speak to a member of your household that can answer on your behalf. All of the information provided during this phone call will be kept confidential. If you do not wish to participate, you are free to decline or withdraw your participation at any time.

Prior to discharge, please ensure that your contact information on file is current. If your phone number has changed, please alert your nursing staff. If you have any questions about the *modified Rankin Scale* assessment, please feel free to ask your nurse and he/she will direct your questions to the appropriate person.

We appreciate your participation and patronage.

Warmest regards,

Your Houston Methodist Stroke Team

### Behavioral Health Resources

Houston Methodist patients can access licensed behavioral health providers in the **MyMethodist** app. Go to your App Store, download the **MyMethodist** app, and select **Virtual Health Care** to schedule your session using your mobile device or laptop from anywhere.

*All of the behavioral health services are available without insurance. The cost of the visit varies based on the experience of the therapist. Please enter your insurance information before your visit to determine your individual pricing.*



If there is an emergency, call **911**.

**FIND HELP:** There are also resources on <https://www.findhelp.org/>

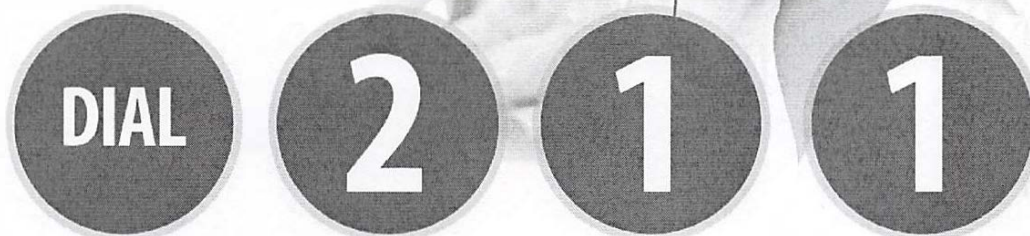
*Enter your zip code to see services related to Financial assistance, food, medical care, transit, goods, education, work, legal, and others for free or reduced-cost*



**TEXAS**  
Health and Human  
Services



# Need help and don't know who to call?



**We have trained specialists ready to connect you with services.**

- Food assistance
- Housing and shelter
- Health services
- Veterans assistance
- Mental health services
- Financial and legal
- Employment help
- Child care and education
- Aging and disability
- Crisis and emergency
- And more

**To learn more, go to [211Texas.org](https://211Texas.org)**

**WE CAN HELP**

HHS Media Services 1700219 - February 2017



TEXAS  
Health and Human  
Services



# ¿Necesita ayuda y no sabe a quién llamar?



**Tenemos especialistas capacitados listos para conectarlo con servicios.**

- Ayuda con la comida
- Vivienda y refugio
- Servicios de salud
- Ayuda para veteranos
- Servicios de salud mental
- Asuntos financieros y legales
- Ayuda para encontrar empleo
- Cuidado de niños y educación
- Personas mayores o discapacitadas
- Crisis y emergencias
- Y mucho más

**Para saber más, vaya a [211Texas.org](https://211Texas.org)**

**PODEMOS AYUDAR**

### **We Will Call You**

Within 24 business hours after your discharge, you should receive a text message or automated phone call to check how you are doing. If you indicate through the automated text or call that you have a question about medications or discharge instructions, or have other concerns about your health, one of our nurses will respond between 8 am-5 pm, Mon-Fri, at no cost to you. We appreciate your response, as we are available to help you manage your care at home.

If you have a question or problem before you receive this call or text, please contact your provider or the hospital at 713-790-3311. Your health and safety are always important to us. Thank you for choosing Houston Methodist Hospital.

## EXHIBIT 16



**Houston  
Cardiology  
Consultants**

**To Whom It May Concern**

Please excuse **Choudhri, Ali** from Work. He was seen in the office on June 7, 2024.

**Remarks / Limitations:**

Patient had a stroke with ongoing workup. Patient will need to be off work for a month. Patient shall not return to work until July 7, 2024. Patient shall not participate in any stressful interactions and not return to work until July 7, 2024.

If you have any questions or concerns please contact my office.

Sincerely,

**Sajid Ali MD**

Interventional Cardiology / Peripheral Vascular Disease

Houston Cardiology Consultants

Address: 8830 Long Point Drive, Suite 507, Houston, TX. 77055

Tel: (713) 464-4140

Fax: (713) 464-7296

Email: [info@hccheart.com](mailto:info@hccheart.com)



**ENTERED**

September 24, 2024

Nathan Ochsner, Clerk

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**IN RE:**

**GALLERIA 2425 OWNER, LLC,**

**Debtor.**

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**CASE NO: 23-34815**

**CHAPTER 11**

**ORDER DENYING MOTION (ECF NO. 740)**

Before the Court is the Motion to Reconsider (ECF No. 740) filed by 2425 WL, LLC. For the following reasons the motion is denied. This motion was filed under Federal Rules of Civil Procedure (“Fed. R. Civ. P.”) 59(e), 60(a) and 60(b), as well as Federal Rules of Bankruptcy Procedure (“Fed. R. Bankr. P.”) 9023 and 9024.

The Court is being asked to reconsider its Order Disallowing Proof of Claim No. 7 which it entered after an evidentiary hearing on September 6, 2024. Although the movant also claims that Fed. R. Civ. P. 60(a) applies, it does not point to any clerical mistake or a mistake in oversight or omission as provided by Rule 60(a). Instead, the main thrust of its arguments is found under Rule 60(b)’s allowance of relief from mistake, inadvertence, surprise or excusable neglect. The Court stands on the hearing record, the evidence presented to it and its order with fact and legal findings.

Motions filed under Fed. R. Civ. P. 59(e) in bankruptcy court must be brought within 14 days.<sup>1</sup> The movant filed this motion on September 24, 2024, when the 14 days expired on September 20, 2024. Accordingly, this motion was not timely filed under Rule 59(e).

Furthermore, Fed. R. Civ. P. 59(e) requires movant to clearly establish either a manifest error of law or fact or must present newly discovered evidence.<sup>2</sup> This motion makes the same arguments made at trial, i.e. that the Settlement Statement attached to the disallowed Proof of Claim (Claim 7-2) somehow supports it rather than disproves it; that there was proper consideration; and that Choudhri has legal authority to sign the disallowed Promissory Note and Deed of Trust. All of these arguments were expressly rejected at trial. Thus, there is no error of law or fact, and the movant has not presented any newly discovered evidence.

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<sup>1</sup> Fed. R. Bankr. P. 9023. Movant mistakenly states that the deadline is 28 days in its motion.

<sup>2</sup> *Pluet v. Frasier*, 355 F.3d 381, 384 (5<sup>th</sup> Cir. 2004).

As the Court stated:

As indicated by the Settlement Statement the borrower was Galleria 2425 Owner, LLC (the debtor), the Seller was 2425 WL, LLC (the claimant) and the lender was NBK. The Contract Sales Price (Line 401) is \$79,500,000.00 and after payment of all outstanding debits and credits the Seller and claimant received cash of \$13,720,254.15 (Line 603). The false Proof of Claim 7-2 is based on line 518 of the Settlement Statement which indicates a “Seller Credit to Buyer” of \$14,730,332.38, which when netted against debits to the Buyer in the settlement statement leads to the cash payment to the Seller and claimant of \$13,720,254.15. Somehow line 603 of the Settlement Statement leads the claimant to make the fanciful, and wholly false claim that the claimant who received over \$13 million in cash has an additional claim against the debtor for over \$14 million dollars plus accumulated interest as if it lent the debtor this sum, when it did not.

The Court reiterates that a plain reading of the settlement statement in conjunction with the testimony of the two appearing witnesses Azeemeh Zaheer and Christopher Wyatt can only lead to one conclusion, the conclusion reached by the Court in its order disallowing the claim. That the movant believes there is “no basis for the Court to disallow the claim” is in the opinion of this Court again fanciful and without a factual or legal basis.

The Court disagrees with the allegation that it erred as a matter of law by rendering a moot decision to invalidate the Proof of Claim. First, the Court notes that the Chapter 11 Plan has been appealed, that is it possible that Plan confirmation may be reversed, and the claim would therefore not be disallowed. Additionally, that the issues of claim validity that were raised in the objection to claim are substantially different than those raised by plan confirmation.

The Court also reiterates the long history this Court has experienced with Ali Choudhri (“Choudhri”). The Court has found Choudhri’s truth and veracity to be lacking on multiple occasions. The Court stresses that Choudhri cannot expect the Court give weight to his unsubstantiated claims in this motion given (1) its prior holdings and (2) the prior hearing testimony of the Chapter 11 Trustee where “he could not rely on the veracity of Choudhri.”<sup>3</sup>

The Court addresses Choudhri’s claims that he was ill and unable to testify at the claim objection hearing. Unfortunately, Choudhri is much like “the boy who cried wolf.”<sup>4</sup> Choudhri has on multiple occasions claimed to have suffered a stroke only to appear before this Court and another Bankruptcy Court [Judge Marvin Isgur] and give testimony. The Court therefore must

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<sup>3</sup> ECF No. 565, pg 10) “He further testified that it was his opinion that he could not rely on the veracity of Choudhri.”

<sup>4</sup> One of Aesop’s Fables, to cry wolf is to give a false alarm so that future claims are treated as doubtful.



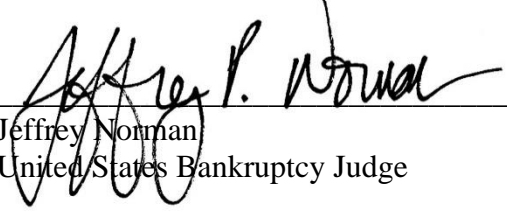
severely discount his claims that he was unable to appear. The Court additionally notes that his Emergency Motion to continue the claims disallowance hearing was filed at 10:05 p.m. the night before the scheduled hearing, less than twelve hours prior to that hearing. As the Court stated on the record when it denied Choudhri's request to continue, there were no reasons as to what only became apparent at 10:00 p.m. the night before the hearing, that the Choudhri parties could not have known much, much earlier.

The Court stresses its prior holding regarding what it perceives to be a long running scheme by Choudhri to stall a foreclosure and litigate.<sup>5</sup> The Motion to Reconsider is simply more of the same and rehashes the same arguments made at the hearing. This Court, as the trial court, has ruled. The parties have appeal rights, and the Court encourages them to exercise them, it will not however reconsider its ruling.

Therefore, for the reasons stated above, the Court denies in its entirety the Motion for Reconsideration and Relief from Judgment.

**SO ORDERED.**

SIGNED 09/24/2024

  
\_\_\_\_\_  
Jeffrey P. Norman  
United States Bankruptcy Judge

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<sup>5</sup> ECF No. 565, pg 16) "As shown by the record, the Debtor and its principal have attempted and to this point been very successful in delaying NBK from exercising its rights under its loan documents, deed of trust and the Confidential Settlement Agreement. The Debtor and its principal Choudhri have been involved in a long running scheme to postpone a real estate foreclosure. This Court has spent over two days June 17 and 19, 2024, hearing specific evidence regarding the disputes between the Debtor, its principal and the NBK. The Court has previously found that the disputes raised by the Debtor, primarily the Debtor's principal, who is also the principal of the other objecting creditor, to be dubious and of limited value that includes primarily nuisance litigation to avoid foreclosure of the subject real estate. The Court finds that it has evaluated the claims raised by the Debtor and its principal based on the evidence presented in this case, especially the documentary evidence. The Court's evaluation finds these claims are not viable."

1 UNITED STATES BANKRUPTCY COURT  
2 SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

3 In re ) CASE NO: 23-34815 (JPN)  
4 )  
GALLERIA 2425 Owner, LLC, ) Houston, Texas  
5 )  
Debtor. ) Monday, June 17, 2024  
6 )  
) 9:00 a.m. to 7:35 p.m.  
-----)

7

8 TRIAL

9 BEFORE THE HONORABLE JEFFREY P. NORMAN  
10 UNITED STATES BANKRUPTCY JUDGE

11 APPEARANCES:

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22 For the Trustee:  
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25 Proceedings recorded by electronic sound recording;  
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1                   HOUSTON, TEXAS; MONDAY, JUNE 17, 2024; 9:00 a.m.

2                   (Call to Order)

3                   THE COURT: Good morning. We're on the record for  
4 June 17, 2024. The first matter set is the motion of the  
5 trustee for a protective order, Number 467.

6                   Mr. Shannon, I'm assuming you're going to be  
7 speaking for the trustee.

8                   MR. SHANNON: Yes, Your Honor. R.J. Shannon, on  
9 behalf of the trustee.

10                  THE COURT: All right, and Mr. Sather, are you  
11 going to be speaking for 2425 WL?

12                  MR. SATHER: Mr. Burks will be taking the lead for  
13 our side.

14                  THE COURT: Okay. Thank you.

15                  MR. SATHER: However, Mr. Smith will be appearing  
16 on the motion for protective order.

17                  MR. BURKS: You've called a motion for protective  
18 order and, Mr. Sather, I didn't understand. That's the only  
19 thing you're asking --

20                  THE COURT: That's the only thing I'm asking  
21 about.

22                  MR. SATHER: Oh, I'm sorry.

23                  THE COURT: So Mr. Burks is going to speak on that  
24 particular motion, because it's the only thing I'm calling  
25 right now.

1           MR. SATHER: Oh, no. Actually, Mark Smith will  
2 speak on that.

3           MR. SMITH: I'll be speaking, Your Honor. Mark  
4 Smith.

5           THE COURT: Okay. Thank you.

6           All right. Mr. Shannon, what's the status?

7           MR. BURKS: Thank you, Your Honor.

8           MR. SHANNON: Thank you, Your Honor. Again, R.J.  
9 Shannon, on behalf of the trustee. Yes, this motion is, I  
10 guess, going forward. The motion was filed at Docket 467.  
11 The court entered an order granting it in part at 468, and  
12 the trustee filed a witness and exhibit list at Docket 505  
13 just with respect to this particular motion.

14           Your Honor, to expedite things, we filed a  
15 declaration for me about this, and that's at Docket 505-1.  
16 I believe perhaps the easiest way to do that would be to  
17 address that first, have that admitted or not admitted along  
18 with the rest of the exhibits, and then do argument.

19           THE COURT: Okay. That's fine. So at this point  
20 in time, do you want to offer 505-1 through 15? Is that  
21 what you're asking?

22           MR. SHANNON: Yes, Your Honor.

23           THE COURT: All right. So let me go to Mr. Smith.  
24 Do you have any objection to 505-1 through 15, or excuse me,  
25 through 16?

1 MR. SMITH: No objection, Your Honor.

2 THE COURT: Okay. They're admitted.

3 (Trial Exhibits 505-1 - 505-16 entered into  
4 evidence)

5 MR. SHANNON: Thank you, Your Honor. And with  
6 that, that's all the evidence we have, and we'd move to  
7 argument unless they have evidence.

8 THE COURT: All right. Mr. Smith?

9 MR. SMITH: Your Honor, if we're just talking  
10 about his 505, we have no objection. You know, all I would  
11 say is with regard to the necessity, I believe it's, what,  
12 ten hours on this motion. Just to give you a little of the  
13 background, there was an email sent --

14 THE COURT: No one can see you unless  
15 (indiscernible) appearing online.

16 MR. SMITH: Sorry about that, Your Honor. There  
17 was an email sent to Mr. Shannon on the 10th asking for  
18 dates for the deposition. He responded basically that there  
19 was no time available during that week. After conferring  
20 with our client, we set a deposition for what appeared to be  
21 the least conflicting date of the dates he -- there was some  
22 conflict with all of them. We picked the one that appeared  
23 to have the least conflict, sent the notice of deposition  
24 with the intent of then having Mr. Shannon to respond and  
25 being able to work out hopefully someday.



1           He did respond on the 11th. I believe he sent the  
2   email around 9:50 a.m. I did not receive that email or did  
3   not see that email until about 1:24. I know that because I  
4   forwarded it at that time. And he offered a one- to two-  
5   hour window on that Sunday for a remote deposition. I was  
6   unavailable on that Sunday. I began trying to find someone  
7   to either cover that time or to reschedule on our behalf. I  
8   did not get a chance to get back to him. At 3:43, I  
9   believe, he filed a motion which was then granted.

10           So there was no -- he mentioned a motion for  
11   protection in his email, but with no deadline, did not say  
12   when he would be filing or deadline for response. So we  
13   don't feel that the fees are appropriate in this situation.  
14   We did not -- we did not disagree with withdrawing that  
15   original. We were trying to get the Sunday deposition time  
16   covered or decide whether we even wanted to take a  
17   deposition one to two hours remotely on a Sunday. So we  
18   just don't feel that the fees are appropriate in this case.  
19   This was just a matter of he sent the email, we were working  
20   on responding to that email and he filed a motion for  
21   protection within just a few hours.

22           THE COURT: All right. So do you want to present  
23   any evidence at this point in time other than argument?

24           MR. SMITH: The evidence are in the record, Your  
25   Honor. If you look, I believe it's the email string are

1 467-16 and 467-17 are those emails that I referenced, and  
2 then the 467-15 would be the schedule, the original email he  
3 sent regarding the schedule for that week.

4 THE COURT: All right. So do you have any  
5 objection, Mr. Shannon, to me admitting those into the  
6 record, 467-16, 17 and 15?

7 MR. SHANNON: No, Your Honor.

8 THE COURT: All right. Then I'll admit those as  
9 well.

10 (Trial Exhibits 467-15 - 467-17 entered into  
11 evidence)

12 THE COURT: Mr. Smith, anything else?

13 MR. SMITH: No sir, other than just looking at the  
14 timing, as you will see from those emails, we clearly  
15 believe that ten hours is excessive for the motion that was  
16 filed. Obviously that's what he's represented. We feel  
17 like ten hours -- I believe there's 15 hours from the time  
18 we sent this in total time from the time this began until  
19 the time the motion was filed. And the claim is that there  
20 were ten of those 15 hours spent drafting this motion, if  
21 you look at 467 itself. This is not a very detailed or  
22 complicated motion. We just feel that the ten hours is  
23 excessive, Your Honor, and I believe that'd be all.

24 THE COURT: All right. Thank you.

25 Mr. Shannon, I'll let you close.

1           MR. SHANNON: Thank you, Your Honor. I suppose it  
2 seems like the objection is to the reasonableness of the  
3 fees. That's what I hear. As detailed in the declaration,  
4 it wasn't -- it was actually 8.1 hours spent from the motion  
5 and it was not all spent drafting the motion. Of course, we  
6 had to -- as detailed in the declaration, I had to  
7 communicate with the trustee, ask if there was an  
8 alternative time. And also, I'll just point out in this  
9 case, normally I do not think this amount of time would have  
10 been reasonable. I think you have to consider this  
11 particular case and there have been appeals that, at least  
12 from the trustee's perspective, are not well-grounded. And  
13 we wanted to establish a definitive record of what happened  
14 so that if there is any kind of appeal based on the  
15 inability to take the trustee's deposition, that it is clear  
16 what happened.

17           I'll point out also, Your Honor, again that the  
18 trustee had made himself available. He made himself  
19 available to me on June 6th when the deposition was  
20 originally scheduled. The trustee did not agree to  
21 reschedule it. It was unilaterally canceled by 2425 WL.  
22 And I think all of that was important information for the  
23 court to have and to be in the record. And that was the  
24 reason for the amount of time. Again, it was 8.1 hours  
25 between communicating with the trustee, communicating with

1 counsel for 2425 WL, and then 2.5 hours preparing the  
2 declaration and the exhibits that are now admitted into the  
3 record.

4           Again, just under the circumstances of this  
5 particular case and the importance of actually obtaining the  
6 protective order, that was all necessary and reasonable,  
7 Judge. Again, the trustee, we had essentially two days to  
8 obtain the protective order. I think if there was more  
9 time, it might have made sense to file a very brief motion  
10 with just pointing out the obvious, that the trustee said he  
11 was unavailable and the deposition was noticed in two days.  
12 And that might have been enough, but it might have also  
13 required a hearing.

14           So under those circumstances, Judge, we submit  
15 that those fees are reasonable and should be awarded, and  
16 that's essentially our argument, Judge.

17           THE COURT: All right. Thank you. So I'll take  
18 the motion of the trustee for protective order, Number 467,  
19 based on the evidence, under advisement, and we'll move on  
20 to the next matter, which is probably more pressing.

21           All right. Let's call now the motion to permit  
22 credit bidding filed by 2425 WL, LLC. Who's going to speak  
23 on behalf of 2425 WL?

24           MR. BURKS: My name is Gray Burks, G-R-A-Y, B-U-R-  
25 K-S, Your Honor.

1           THE COURT: Thank you, Mr. Burks. Who's going to  
2 speak for NBK?

3           MR. TROOP: Your Honor, Andrew Troop. I'm told I  
4 don't speak loud enough. Let me try again. Your Honor, Mr.  
5 Troop, from -- Andrew Troop (indiscernible) from Pillsbury  
6 Winthrop Shaw Pittman, on behalf of National Bank of Kuwait.  
7 Your Honor, if you take openings or closings, I'll be doing  
8 that. Witnesses, Mr. Fitzmaurice will take.

9           THE COURT: All right. Thank you.

10          All right. Mr. Burks, opening statement. Go  
11 ahead.

12          MR. BURKS: Yes, Your Honor. Before Mr. Troop and  
13 I start speaking on opening statements, Your Honor, there is  
14 a very pressing matter that I personally have great concern  
15 over. I'm asking Mr. Baker to put up on the record the  
16 medical records of medical doctor statements regarding Mr.  
17 Ali Choudhri, who is a necessary party and an individual. I  
18 have read the motion for continuance. I've written the  
19 order denying that motion for continuance. I've also spoken  
20 with Mr. Choudhri on Thursday, Friday, Saturday and Sunday,  
21 personally on Thursday and Friday; that is, in person. I  
22 spoke to Mr. Shannon and told him that I was extremely  
23 concerned about the physical condition of Mr. Choudhri. I  
24 don't know if it got worse after June 4th or 5th or 6th or  
25 after the motion was filed or not. The man's left side of

1 his body, his face is completely paralyzed. The right side  
2 of his face is puffed up because the left side has dropped.  
3 He has a weeping eye. His gait is changed. He has doctor's  
4 letters, which I'm asking Mr. Baker to put up, stating that  
5 he should be stress-free for four weeks. I don't want to be  
6 the person responsible for another stroke or a heart attack.

7 I discussed with Mr. R.J. Shannon that whatever  
8 the pressing matters of the motion, obviously the motion for  
9 to preclude credit bidding is tied in with confirmation.  
10 It's almost impossible to separate the plan out from that  
11 motion. However, two weeks -- I mean, I'll be available on  
12 any of those dates. Two weeks is up in -- well, the four  
13 weeks is up in two weeks. I do not understand, and I  
14 personally don't -- I'm not going to abandon my client at  
15 this hearing. But I personally do not want to be part of a  
16 hearing where we are violating doctor's orders and putting  
17 this man under extreme stress, Your Honor. And I understand  
18 the motion. I understand why you denied it. But as we  
19 stand here today --

20 THE COURT: Mr. Burks, I've already ruled on the  
21 motion for continuance. If you're making another oral  
22 motion, okay --

23 MR. BURKS: I am.

24 THE COURT: All right. Then I'll let everyone  
25 respond to that. You've made it. I think you've made your

1 argument.

2 Let me now go to Mr. Troop or Mr. Fitzmaurice, and  
3 you can respond to that.

4 Mr. Burks, I will tell you, part of the reason  
5 that I basically denied the motion was because I had a  
6 discussion with Judge Isgur about what happened at the  
7 hearing after the motion was filed.

8 MR. BURKS: Yes.

9 THE COURT: So I didn't do it callously. I  
10 basically talked to him. He said that he was there, that he  
11 participated, that he appeared able to participate and he  
12 didn't participate -- didn't at that point in time appear to  
13 have any sort of problems at all. Okay. So that's the  
14 reason for the motion being denied. If the order isn't  
15 clear in that regard, it is.

16 MR. BURKS: It is.

17 THE COURT: All right. So that's where we are  
18 currently. I take your oral motion. I'll let Mr. Troop or  
19 Mr. Fitzmaurice respond to it. All right. Thank you.

20 MR. BURKS: Thank you, Judge. And I am talking  
21 about where we are now, not where we were.

22 THE COURT: I understand. I understand. But I  
23 mean, here's also the problem. Okay.

24 MR. BURKS: Yes.

25 THE COURT: You're doing this at 9:15 for a

1     hearing that was set at 9:00. Is there some reason you  
2     couldn't have put everyone else on notice that you were  
3     going to ask for continuance today, and did you give anyone  
4     else notice?

5             MR. BURKS: On Friday afternoon at approximately  
6     2:00 I had a conversation with Mr. R.J. Shannon. He told me  
7     he --

8             THE COURT: I don't think the party to this motion  
9     is R.J. Shannon. I think it's the National Bank of Kuwait.  
10    Did you have any discussions with them?

11            MR. BURKS: No, Your Honor. I did not.

12            THE COURT: All right. All right. Then I'll ask  
13    Mr. Troop or Mr. Fitzmaurice to respond to that.

14            MR. TROOP: Your Honor, Andrew Troop, again for  
15    National Bank of Kuwait. We, of course, like the court, do  
16    not intend to be callous in our response. I am, however,  
17    surprised that the first we're hearing this and these new  
18    circumstances are today, as you said, at 9:15.

19            The need to move this case forward has been well  
20    known for a long time. There is an auction schedule for  
21    tomorrow. There are five, four attorneys from Pillsbury  
22    here. Three of us traveled, two of us on Saturday, to be  
23    here prepared for today's hearing. The representative of  
24    the bank also traveled yesterday to be here for today's  
25    hearing.



1           And the challenge here, Your Honor, is that, as we  
2   laid out in our papers, is not that Mr. Choudhri is reported  
3   to be unable to participate. The challenge here is that if  
4   the auction and the confirmation hearing on NBK's plan is  
5   tied to Mr. Choudhri's health, then there's no telling how  
6   many times at the last minute this issue will rise and have  
7   to be addressed by us, meaning you and me, in an awkward and  
8   uncomfortable circumstance.

9           The alternatives to proceeding are not good for  
10   the estate. The estate, Your Honor, you'll hear in  
11   testimony today, so I'll just proffer it now, and please  
12   accept it as true. You will hear that the building is in  
13   bad shape. It is requiring significant maintenance and  
14   expense. And the party expending those funds is NBK. And  
15   getting the property out of the hands of the estate and  
16   proceeding with what is a fair plan, Your Honor, NBK's plan,  
17   is in the best interest of the estate, which I think, under  
18   the circumstances, needs to take precedence, though I say  
19   that with a heavy heart because my -- I'm always sympathetic  
20   to anyone's individual plights.

21           But this is a corporate debtor and this is a  
22   corporate objector and this is -- Mr. Choudhri's health and  
23   his challenges, at least since June 2nd, have also been  
24   related to them. And so, Your Honor, I would ask humbly,  
25   because I don't know how else to say it, that the request

1 for a continuance be denied. Thank you.

2 THE COURT: Thank you.

3 Mr. Burks, you can come to the podium.

4 MR. BURKS: May I ask Mr. Choudhri to come step  
5 forward, Your Honor?

6 THE COURT: No.

7 MR. BURKS: All right.

8 THE COURT: No. I mean, and here's the problem,  
9 Mr. Burks. You don't come to a hearing at 9:15 that's set  
10 at 9:00 and surprise parties who have traveled and done  
11 whatever they need to do to get here to be ready to  
12 prosecute or defend your motion at the last minute and ask  
13 me to continue the case. I'm going to deny your motion.  
14 All right.

15 MR. BURKS: Yes, Your Honor.

16 THE COURT: Thank you. So you may go ahead and  
17 make your opening statement.

18 MR. BURKS: Yes, Your Honor. One moment.

19 THE COURT: Thank you.

20 MR. BURKS: We start with the concept that credit  
21 bidding is a familiar tool used in Chapter 11 bankruptcy.  
22 We also start with -- we also continue with the concept that  
23 it is not an absolute that the court has discretion on the  
24 equities and on the case to -- a case-by-case basis to  
25 preclude the use of the credit bid.

1           Let's look at what the court has said all along in  
2     various procedural orders. The most important thing that we  
3     have to do with this auction in this case is to market test  
4     the value of this property by an auction to maximize the  
5     return for all creditors and possibly to the debtor.

6           There are circumstances where a credit bid simply  
7     does not promote maximizing or testing the auction -- the  
8     value of the property, but actually retards it. And that is  
9     the case here for at least three separate reasons, Your  
10    Honor.

11           The first one is the proof of claim filed at  
12    Document Number 14 for \$67,157,000 by NBK, plus the proof of  
13    claim filed at Docket Number 13 for tax liens in the amount  
14    of \$3,864,455 by NBK totals over \$71 million, Judge. Nobody  
15    thinks that the cash value at the auction is \$71 million or  
16    close to it. In other words, the cash bids that are subject  
17    to the auction are moot to the extent NBK chooses to simply  
18    credit bid over any cash bid. There won't be any cash out  
19    of pocket.

20           The second problem here, this is not what I would  
21    call a pure credit bid, Judge. So a pure credit bid is a  
22    bid where they are bidding in against their proof of claim.  
23    That's not what the plan provides and that's not what's  
24    happening here. This one has conditions, it has feelers, it  
25    has strings. The credit bid is together with -- it's

1 packaged with NBK doing two other things, paying cash, and  
2 I'm using a number that may be wrong. It's, for example,  
3 about \$275,000 into the estate and promising to cover  
4 administrative expenses. Now if they can't credit bid, that  
5 money is not required to be paid. In other words, they're  
6 saying we want to tie in the credit bid with a release of  
7 all claims against NBK. So they're credit bidding against  
8 their proof of claim to buy out claims. I don't know if  
9 that's a credit bid. It's almost a Rule 90. It's almost a  
10 combination credit bid with motion to settle and compromise.

11 The third problem here, and not the most pressing  
12 of all problems, the third problem is that there are  
13 objections to the allowable amount of this claim unresolved.  
14 We don't know what this claim is for two reasons. One, the  
15 pure objection, and two, three lawsuits that are pending  
16 against NBK which need to be resolved in order to know, for  
17 purpose of this motion, not what their allowable claim is,  
18 but what is the ceiling on the credit bid, and it might be  
19 zero.

20 There's an equitable subjugation action. There's  
21 a claim that you'll be hearing about in the confirmation  
22 process regarding whether or not NBK is subject to  
23 liability. And there's a serious claim that you'll be  
24 hearing from both sides on a settlement agreement and on a  
25 subsequent offer, an intender of cash to buy out NBK's note.

1     There's a serious argument the NBK is not the party entitled  
2     to exercise any rights on the note, let alone to credit bid.

3             So the case law that Mr. Sather has filed in his  
4     brief tells you what should be happening here. It says that  
5     in circumstances like this, and, Judge, those cases in which  
6     they held that the credit bid should be denied and held that  
7     the bank can simply make a cash bid, and then if it wins its  
8     claim actions or disputes, get that cash back, well, those  
9     cases address problems far more simpler than here.

10            We have three major problems that call into doubt  
11     whether or not this creditor is even entitled to credit bid  
12     at all. And so if it was a pure credit bid, that would be  
13     one thing. If there was a claim where we knew what the  
14     amount of the claim was, that would be one thing. If there  
15     was a situation where the only proponent of the plan, the  
16     proponent of the plan was the only accepting class and no  
17     one else accepted this plan, that would be another thing.  
18     But literally you have an opponent of a plan saying, Judge,  
19     innocuously, let me credit bid and resolve all the disputes  
20     against me, settle all the claims, basically selling all the  
21     claims for zero, and let me bid zero cash and have the  
22     opportunity up to \$71 million to trump anyone who bids cash.  
23     Thank you, Your Honor.

24            THE COURT: Thank you.

25            Mr. Troop?

1           MR. TROOP: Thank you, Your Honor. Andrew Troop,  
2   again, from Pillsbury Winthrop Shaw Pittman, on behalf of  
3   the National Bank of Kuwait. Let me take the easy one  
4   first. The credit bid (indiscernible) it's not the  
5   (indiscernible) is not tax hunting.

6           Secondly, Your Honor, let me take this in the  
7   reverse order (indiscernible) issues are argued. The first,  
8   Your Honor, is that there are objections or challenges to  
9   NBK's claims. Those objections are for the reasons that we  
10   identified (indiscernible) conduct before August of 2022 has  
11   been released. Conduct since August of '22 has been  
12   investigated by the trustee. Under the final cash  
13   collateral order, the trustee was to bring claims against  
14   (indiscernible) validity, priority or security by the end of  
15   the challenge period. That period has ended. No challenges  
16   were brought. When that happened, under the final cash  
17   collateral order, everyone was bound by the stipulations in  
18   the final cash collateral order.

19           But, Your Honor, you will hear, if there's  
20   testimony there, (indiscernible) testimony today in  
21   connection with the credit bid and the confirmation hearing  
22   that that investigation that was described took place. And  
23   in fact, the resolution, there were no claims asserted  
24   because the trustee concluded they were (indiscernible).  
25   And, Your Honor, because I can't help myself, on the offer

1 question, look very quickly at this timeline. There was a  
2 foreclosure sale schedule for July 5, 2023.

3 At the end of June of 2023, the debtors' lawyers  
4 at Akin Gump emailed and said, could we have documents to  
5 close in accordance with the settlement agreement, which the  
6 state court had effectively elongated until for 210 days,  
7 and -- or let's say even to July 3rd, for the sake of  
8 argument, so we can have them and we could close. And we  
9 said, okay, here's the -- here are the documents. Here's  
10 the number. And July 3rd came and went and nobody  
11 performed. The debtor didn't perform. How, how, how can a  
12 letter which says, here's what you need for the closing on  
13 July 3rd be an offer which is purportedly accepted in April  
14 2024 through a letter that says we'll perform in accordance  
15 with that prior settlement agreement and we tender payment.

16 Your Honor, I think everyone will stipulate that  
17 payment was never made. Even if a tender could solve the  
18 problem, there's been no tender. A tender is when you walk  
19 up and say, here's my money. And there was no money, right?

20 What was the second one? Your Honor, I'll go on  
21 generally to the concept of credit bidding here. The case  
22 law is clear that people, even when there are challenges to  
23 claims, credit bidding is still allowed. There's no dispute  
24 that the money was loaned. There's no dispute it wasn't  
25 paid back. And there's no dispute that the security

1 interest, the deed of trust, was properly perfected. No one  
2 sought to avoid that. No one sought to avoid that. And  
3 they can't, Your Honor. They can't. Even without the final  
4 cash collateral order, they can't. That's a resolved issue  
5 here.

6           So the question then becomes whether this alleged  
7 -- I guess I'll describe it as an intercreditor dispute over  
8 who owns the loan (indiscernible) remember the reasons I  
9 said I think it's there's no there there -- should stand in  
10 the way of credit bidding, where I note the estate's  
11 representative is not objecting to credit bidding. And it  
12 seems to me that what they're saying is, well, don't credit  
13 bid because make them pay cash, and then they can get it  
14 back. But National Kuwait -- National Bank of Kuwait is  
15 good for a money judgment. If they've got independent, non-  
16 derivative claims that they can state that would survive a  
17 motion to dismiss, summary judgment or a trial, there's a  
18 defendant who can pay (indiscernible).

19           So the question is whether the auction should be  
20 put -- thrown into chaos, effectively, which goes back,  
21 unfortunately, to the arguments we had just before, which  
22 is, what is the benefit of delay or (indiscernible) delay  
23 on this estate, and there is none.

24           Finally, Your Honor, the issue with regard to the  
25 plan and the sale being connected, everyone knows that.



1     There's another issue with deception, lack of clarity, lack  
2     of disclosure. The trustee set a (indiscernible) auction  
3     price, calculating what the benefit, how the cash bid would  
4     provide the same benefit to the estate as a credit bid, and  
5     the price for NBK stepping out, like it is often for a  
6     stalking horse bidder, is a release. It's a release from  
7     the estate. It's embedded into the plan. The plan does not  
8     release anything but estate claims, and for the reasons  
9     already stated, pursuant to the final cash collateral order,  
10    everyone's already bound effectively by the results of that  
11    release, except people who have independent, non-derivative  
12    claims.

13                 With regard to the chilling nature of the auction,  
14    Your Honor, I can't think of a case where credit bidding has  
15    been disallowed, where the conduct that gave rise to the  
16    disallowance of credit bidding did not involve some kind of  
17    inappropriate, improper interference with the bid and  
18    auction process. That's the primary issue that  
19    (indiscernible) looking at in these questions. And, Your  
20    Honor, we have done -- we did what a -- we're not a  
21    fiduciary (indiscernible) right? But we put a sort of a  
22    fiduciary hat on and said, how do you get this accomplished  
23    in a way that gives the court and creditors confidence that  
24    the process is a fair one. And that was to -- while they're  
25    connected, it was to separate the responsibility and

1 decision-making with regard to the auction process and the  
2 auction itself from NBK. NBK acted as the bidder, stalking  
3 horse bidder. Did it make demands or conditions? Of  
4 course. You'll hear that they were pushed back on by the  
5 trust bidding. You can look and, if we need to, Your Honor,  
6 we'll give you the draft bidding procedures that we  
7 presented at the trustee, and we'll give you the redline to  
8 show what came back as a result of the trustee doing his  
9 job.

10 When you put all of this together, Your Honor,  
11 there is no basis to disallow credit bidding. The claims  
12 are -- the claims that are asserted are implausible. They  
13 are independent of the estate. In fact, Your Honor, before  
14 I forget, remember two weeks ago, I think it was, we took a  
15 case out of state court and brought it here, and Mr.  
16 Choudhri filed an emergency motion to remand. And what was  
17 his argument? His argument was that the dispute over who  
18 owns the tax lien and who owns the loan is not a core  
19 proceeding. It's related to jurisdiction at best. And the  
20 court should let the state court decide that issue.

21 Now for a variety of reasons, we may disagree with  
22 that. But they're estopped from arguing differently.  
23 They're estopped from arguing differently. That means that  
24 this dispute, the whole basis for their claims, they say, is  
25 a dispute you shouldn't resolve. If you shouldn't resolve

1     it, how can it be the basis to stop credit bidding in a  
2     matter before you? How can it not be that they acknowledge  
3     that the remedy, if they have one, is damages? How could it  
4     not be that the process that was undertaken by the trustee,  
5     which garnered lots of interest, we don't know what the  
6     results are. Maybe not lots of bids, who knows? But lots  
7     of interest to create a market isn't the one to go forward,  
8     particularly where the credit bidding is clearly known to  
9     everybody (indiscernible).

10                 So Your Honor, I ask that you deny the motion and  
11     that the auction go forward with (indiscernible) credit  
12     bidding.

13                 THE COURT: All right. Mr. Burks, you can call  
14     your witness.

15                 MR. SHANNON: Your Honor, may I address the court  
16     real quickly? Your Honor?

17                 THE COURT: Bear with me. Okay. I have a motion.  
18     I have a response. I have a response deadline that passed  
19     and no one else filed any sort of responses. I only intend  
20     to hear the people who actually filed a response.

21                 MR. SHANNON: Yes, Your Honor. It has to do with  
22     one of the exhibits that was inadvertently provided in  
23     discovery that's attorney-client privileged. We can address  
24     it if it comes up.

25                 THE COURT: We'll address it if and when it comes

1 up.

2 MR. SHANNON: All right.

3 THE COURT: Thank you.

4 All right. Mr. Burks, you may call your witness.

5 MR. BURKS: Yes, Your Honor. At this point, Your  
6 Honor --

7 THE COURT: Please sit down, sir.

8 MR. CHOUDHURI: I want to make a record, Your  
9 Honor.

10 THE COURT: No. I would like you to sit down,  
11 please. Thank you.

12 MR. CHOUDHURI: Because --

13 THE COURT: I would like you to sit down, please.  
14 Thank you.

15 Go ahead Mr. Burks. You may call your witness.

16 If you're called as a witness by somebody, Mr.  
17 Choudhri, you may speak at that point in time. I don't have  
18 any problem with that. But --

19 MR. CHOUDHRI: I'm a movant on this motion, Your  
20 Honor. That's why --

21 THE COURT: You're not. You didn't file a  
22 response. There's no response in opposition. You didn't  
23 file anything.

24 MR. SATHER: He was at co-movement, Your Honor.

25 MR. CHOUDHURI: Yes, Your Honor.

1 MR. TROOP: Your Honor, he was a co-movant.

2 THE COURT: He was a co-movant? Okay. Come  
3 forward.

4 MR. CHOUDHRI: Thank you, Your Honor. First of  
5 all, Your Honor, I'm sorry I was a little late. I just  
6 wanted to clarify just one thing for a minute, Your Honor.  
7 So on June the 2nd, I had a stroke on Sunday and I didn't  
8 think it was.

9 THE COURT: Mr. Choudhri, I've already heard the  
10 motion for continuance. If you want to make an opening  
11 statement on the motion, I'm happy to hear it.

12 MR. CHOUDHURI: Yes, Your Honor.

13 THE COURT: But this is not let's throw it to the  
14 court and see what sticks. If you want to make an opening  
15 statement on the motion to prohibit credit bidding, please  
16 do.

17 MR. CHOUDHRI: Yes, Your Honor. I just wanted to  
18 mention one thing about that, something that you had  
19 mentioned earlier. When I went to the doctor on June the  
20 7th, I did call into a hearing --

21 THE COURT: Again, I don't want to hear anything  
22 relative to the motion to continue. If you want to talk  
23 about the motion to prohibit credit bidding, which was  
24 filed, I'm happy to hear it.

25 MR. CHOUDHRI: Yes, Your Honor. Okay. Thank you.

1 First of all, Your Honor, I wanted to just mention the key  
2 here is transparency and how and why we're here and how we  
3 got here.

4 The acts of NBK have been consistent where leasing  
5 efforts have been awarded. There's been offers to sell the  
6 property and NBK is not. In fact, Your Honor, the question  
7 is -- so NBK takes a position that the settlement agreement  
8 has not been rescinded. We have taken the position that --  
9 let me back up a little bit. Sorry.

10 NBK is the reason the debtor is in bankruptcy. In  
11 2020, the building by NBK was appraised for over \$100  
12 million, and the largest tenant went bankrupt, Stage Stores.  
13 And when Stage Stores went bankrupt, there was another  
14 tenant that had signed a lease for three floors, Saunders.  
15 And they didn't move in, mainly, I believe, due to COVID.  
16 But had they been in before COVID, the requirements in the  
17 loan documents by the Bank of Kuwait required them on  
18 5.27(c) that they shall provide SNDAs.

19 Your Honor, I went back. I'm a little slow, and I  
20 apologize, so bear with me. But I went back and I read the  
21 January 31 transcript when you asked me, where are they  
22 required to do SNDAs? Show me. And I said, the settlement  
23 agreement. And at that time, the settlement agreement was,  
24 I believe, confidential. And it's been filed, I believe, by  
25 the trustee and the bank. So I don't believe it's

1 confidential anymore. The settlement agreement supplanted  
2 the loan agreement. The settlement agreement also compelled  
3 them to provide SNDAs and allow the debtor to lease up the  
4 building. The settlement agreement was entered on August  
5 2022, a week before the key people in Kuwait were compelled  
6 to testify. And Mona Dajani, the general counsel, because  
7 what the Bank of Kuwait did in July of 2022 is they filed a  
8 false SAR before they made the loan. They structured the  
9 loan where it was a sale.

10 This goes back to what also happened, what is  
11 happening with me across the board, Your Honor. There's a  
12 gentleman named Osama Abdullatif. He has filed lis pendens  
13 on 90 of my properties. First, what he did is he recruited  
14 my ex-wife in 2015, even though I was divorced in 2012 and  
15 had her file lis pendens, and all of these entities were  
16 defendants, including the creditor here. 2425 WL was a  
17 defendant, and this property had a lis pendens on it. And  
18 that case ended in 2019. The court found that I was  
19 divorced, or the court had no jurisdiction because the court  
20 earlier found I was divorced in 2012. So this was  
21 asymmetric warfare and barratry, sponsored litigation by  
22 Osama Abdullatif.

23 So in 2018, when the loan was made by the Bank of  
24 Kuwait, they wanted the property to be transferred from 2425  
25 WL to a new created entity, Galleria. All the funds from

1 the buyer -- there's no funds that came from the buyer on  
2 the closing statement that Mona Dajani, representing the  
3 Bank of Kuwait, approved, the closing statement. The deal  
4 was structured the way it was. There's evidence of that.  
5 That's what our case -- they structured the deal the way  
6 they did.

7 The loan documents provided that the bank shall  
8 approve leases, but not unreasonably withhold approval.  
9 Fast-forward, Sonder shows up. Sonder wants to sign a  
10 lease. Now in 2019, the court, the family court in Harris  
11 County found that I was divorced as of 2012, and the court  
12 had no jurisdiction. So all of the lis pendens that were  
13 filed by Osama through the sponsored litigation were void  
14 and dissolved. And that was one of the concerns that Bank  
15 of Kuwait had and Mona Dajani had, that she could -- the ex  
16 could file more lis pendens, and that's why they structured  
17 the deal.

18 And at that point, we moved forward. In 2020 --  
19 in 2019, Sonder came to me through the City of Houston, the  
20 mayor's office. They were looking at expanding their short-  
21 term rental. They go and -- they're like Airbnb, but  
22 they're standardized. It's as if you go to a Marriott  
23 versus like an Airbnb is a one-off independent. You get  
24 independent reviews. And Sonder, one of their seed  
25 investors is Bezos Expeditions. So it was a startup, and



1     they came to me and I met with them. They met with a lot of  
2     developers in town. They ended up signing five leases with  
3     varying companies, Your Honor. And once they did that, we  
4     informed the Bank of Kuwait, Mr. Carter, Michael Carter.

5             And one thing I want to mention, Your Honor,  
6     there's an internal loan memo that was drafted and submitted  
7     by the Bank of Kuwait in March of 2018 when they laid out  
8     this whole thing about my ownership, Jetall being successful  
9     in leasing the building, myself owning it and continuing to  
10    own it after the loan closed. And after Stage filed  
11    bankruptcy, I attempted to acquire Stage when it was in  
12    Judge Jones' court. I was not successful. But the company  
13    failed, 13,000 people lost their jobs. They were our  
14    largest tenant. And there's an email with Michael Carter  
15    where he emails other people at the Bank of Kuwait. Again,  
16    all decisions were made in Kuwait and it says our effective  
17    equity counter, Ali Choudhri is trying to buy Stage Stores.  
18    If they do, they'll be successful in saving the tenant.  
19    This is in 2020.

20            Fast-forward with Sonder not moving in. Some of  
21    the factors of Sonder not moving in, there were delays.  
22    Obviously, Sonder had their own excuses, and I believe it's  
23    mainly COVID. The Bank of Kuwait's position has been all  
24    leases have to be approved in writing and cannot be  
25    unreasonably withheld. They asked the (indiscernible) to

1 sign those leases for the three floors for 15 years. And  
2 what that does, Your Honor, it was forethinking. It would  
3 convert three floors of the building to apartment hotel.  
4 It's truly live, work and play, mixed use. And in Feb.  
5 2020, permits were approved by the City of Houston.

6 But in January 2019, when the leases were  
7 submitted to Mr. Carter, he and Mr. Marwan and the people  
8 that I spoke to in Kuwait were anxious for us to sign those  
9 leases. We did not get those approvals in writing. They  
10 asked us to get them signed. Those leases were signed.  
11 Subsequently, a few months later, when the TIs, the tenant  
12 improvements and leasing commissions were sought, Bank of  
13 Kuwait took a position that those leases are null and void  
14 because you never got them in writing. They sent initial  
15 default letters. That's what the default started. Mr.  
16 Carter, in his deposition, could confirm that and testify to  
17 that. So the bank says leases approved. Then they say, you  
18 didn't get it right. It's not approved. It's null and  
19 void. And then they're emailing the appraiser, asking him  
20 to include the leases in their report.

21 Fast-forward, COVID. So Feb. 2020, the permits  
22 get approved. March 2020, COVID happens. May 2020, Stage  
23 Stores files bankruptcy. The building is bleeding. It's  
24 losing money. Lots of things are going on at that time.  
25 It's very difficult. And the bank -- at that point, we

1     tried our best to lease up the building, and we got some  
2     leases. We got a tour with Microsoft. We had an interest  
3     with Bechtel. We had lots of interest and proposals, actual  
4     proposals. And this is a pattern that's been repeating  
5     itself. We got the proposals. We presented them to the  
6     bank. They wouldn't approve them.

7             Finally, we threw up our hands and said, we're  
8     going to sell the building. We got an offer. We got a  
9     couple of offers. Holland & Knight sent the offer to the  
10    Bank of Kuwait, to Mona Dajani at Pillsbury. The offers,  
11    there's an offer there for \$85 million. There's an offer  
12    there. And these are typical offers that require typical  
13    due diligence so you're not depressing or suppressing the  
14    market. It's not a value destroying auction or process  
15    where somebody has three weeks of marketing and has to pay  
16    10 percent nonrefundable and close immediately. You're  
17    going to take 80 percent of the buyer pool away.

18            Subsequent to that, Your Honor, offers were made  
19    to the Bank of Kuwait. Mr. Carter in his deposition on June  
20    the 5th testified that they received no offers. They didn't  
21    receive the \$85 million offer, when it was in fact received.  
22    In fact, it was also that Holland & Knight letter and the  
23    control and the documents were also sent to R.J. Shannon in  
24    2021. Subsequent to that -- when he was with the firm  
25    Parkins Lee & Rubio, which was Kyung Lee, R.J. Shannon and

1 Lenny Parkins.

2 Subsequent to that, Your Honor, the bank decided  
3 instead of responding to the offer and the leases, to help  
4 the borrower pay the bank off, it would be a good thing.  
5 The loan documents also state in the loan documents that the  
6 borrower has to get approval of the bank before it can enter  
7 into a sales contract. Obviously we were very hesitant to  
8 do that without getting approval because of the Sonder  
9 default that they claimed after they approved the lease of  
10 Sonder, then they claimed it was not approved.

11 Interestingly, after Sonder didn't move in and in  
12 the state court litigation, in their Interrogatory Number 6,  
13 they state we approved Sonder. Well, in the deposition they  
14 approved, they state they didn't approve them. Well, it's  
15 very convenient. They approve them or they don't. They've  
16 also stated they've never approved a single lease, except  
17 one lease which is Sonder. And I can guarantee, Your Honor,  
18 there have been many, many leases submitted.

19 Mr. Carter also testifies that he doesn't know  
20 Vaxanix. If you remember, there was a gentleman from  
21 Vaxanix, which is the Dole Food Company, who wanted to sign  
22 the lease for 13,000 square feet and take up to two floors,  
23 but start with 13,000 feet. NBK says they didn't receive  
24 that lease either. That lease was submitted to the trustee.  
25 It was submitted to the court. The witness was submitted to

1 the court. I correct myself. The lease was submitted to  
2 the trustee in Feb., in March. Mr. Carter testified that he  
3 didn't receive that lease either, that he hasn't received  
4 any leases.

5 In September of 2021, in August of 2020 -- I'm  
6 sorry. August of 2021, Holland & Knight, our counsel, my  
7 counsel, the debtor's counsel, my counsel sends a contract  
8 to the Bank of Kuwait to approve to sell the building for  
9 \$85 million that would clear their debt. Instead of  
10 responding to it, they posted the property for foreclosure  
11 before accelerating the loan. The debtor goes to court,  
12 gets a TRO. Mediation is compelled. They don't come to  
13 mediation. The TI goes forward. Judge Weems grants the TI.  
14 Nobody from Kuwait shows up. Judge Weems grants the TI in  
15 March of 2022 and trial is set for September 2022.

16 In June of 2022, the bank amends their complaint,  
17 adds fraud claims. When you're -- it seems like a pattern.  
18 When you question or someone retaliates back.

19 MR. TROOP: That's the removed adversary that's  
20 (indiscernible) state court.

21 MR. CHOUDHRI: In June of 2022, the Bank of Kuwait  
22 amends their complaint, counterclaims and says that the  
23 debtor committed fraud. We asked for discovery. They non-  
24 suit. Their amended complaint said that discovery is not  
25 necessary. We go forward to trial. Depos are compelled

1     Mona Dajani because claims they made were not truthful.  
2     Representations they made, even on an SAR, were false. And  
3     in fact, they asked Judge Weems to terminate their  
4     testimony, which would be an obstruction of justice. And  
5     Judge Weems denied doing that.

6             Judge Weems compelled the depositions of the key  
7     people at the Bank of Kuwait. The Bank of Kuwait entered  
8     into a settlement agreement. I don't believe they entered  
9     into that settlement agreement in good faith, Your Honor,  
10    and I don't believe they're here in good faith today. The  
11    settlement agreement got entered. Tax liens for several  
12    million dollars were assigned over to them. And there's no  
13    provision in that settlement agreement that says they get to  
14    keep them. They have to give them back.

15            The settlement agreement also says the venue, the  
16    reason it was filed in the 129th, that case, Your Honor, it  
17    says, by agreement, the venue is Harris County district  
18    court. We'd be happy to come to Your Honor, but that's what  
19    we followed, and that's what the settlement says, which  
20    they've now filed. And so when the settlement agreement was  
21    done, Your Honor, in August 2022, at this point, the  
22    building is suffering. It has no occupancy. I've been  
23    funding this, bringing funds, as you can understand. You  
24    have a 300,000 square foot building. It's hundreds of  
25    thousands of dollars every month just to keep things going

1 while they're tying our hands and precluding us from leasing  
2 out. The reason Judge Weems entered that TI, because if  
3 some testimony and evidence came out, Your Honor, where  
4 their plan was to remove me, the equity owner, and bring in  
5 their other people in New York that they had.

6 NBK is acting like banks in the '80s where laws  
7 were created and they want to hide discovery. They'll do  
8 whatever to hide and run from the discovery. And everything  
9 should be transparent, should be open, and it's transparent,  
10 and it hasn't been, Your Honor. I can vouch for that. When  
11 the Stage bankruptcy happened, Your Honor, at Document 70,  
12 Page 8 and 9, furniture, FF&E, Stage spent \$14 million on  
13 furniture for 200,000 square feet.

14 The background of the building, Your Honor, I  
15 bought the building in 2012 when Blue Cross was moving out.  
16 And I gutted it, renovated it, fixed it up, got it leased  
17 up, brought Stage in. In fact, their loan memo brags how  
18 great I did and all the assets they looked at and how  
19 successful I was. I've had my own challenges with this guy  
20 Osama, who's been attacking me on every front.

21 But when I got the building leased up, I got Bank  
22 of America to finance it. And then I was approached by NBK  
23 to refinance it with them, and that's the structure they  
24 set. We followed their structure. Their loan agreement  
25 says they cannot unreasonably withhold approval. They have

1 to act in good faith. And the provision is New York law  
2 where it's good faith in dealing. And they haven't done  
3 that.

4 They're going to do everything they can. They've  
5 given the trustee -- they've told the trustee, because I  
6 asked the trustee, what are the admins so we can come up  
7 with a proposal that's better. It's irrelevant because --  
8 in writing, Mr. Shannon says it's irrelevant because NBK is  
9 going to pay whatever it is, whatever it is, so they can  
10 create liquidating trust and keep attacking, and so they  
11 have an open check by the Bank of Kuwait. Instead of  
12 holding them accountable, hold everybody accountable, open  
13 the door for transparency, have a discovery master,  
14 whatever, because there's things that are being hidden, Your  
15 Honor.

16 Mr. Reese filed a deposition which earlier on they  
17 said, well, you were dilator in discovery. He filed a  
18 deposition, and it was quashed. Then they bullied him and  
19 said, hey, you can't do it, you're not the debtor. And that  
20 wasn't accurate. And so when you see the email, Your Honor,  
21 it will be astonishing. The evidence is overwhelming. The  
22 bad faith by the bank is overwhelming and it is -- and the  
23 reason Jerry Alexander, who's here in the courtroom, he  
24 handled the Bailey Tool case. And there's other large law  
25 firms that have agreed to take this case on against the Bank



1 of Kuwait on a full contingency for no cost.

2 Forget the litigation. We said, hey, we'll pay to  
3 buy those claims. All we want to do is settle. All we want  
4 to do is for them to honor what they said they were going to  
5 do. If they want to say the settlement isn't rescinded,  
6 well then their amount is not more than \$26 million. They  
7 can't have it both ways. We have QB -- and I'm all over the  
8 place and I'm sorry, Your Honor. Thanks for bearing with  
9 me.

10 It's just there's a malignment of reputation.  
11 There's a malignment of a narrative. There's always two  
12 sides to it. And my dad taught me -- pe passed away in 2012  
13 and I learned from him going to the RTC in the early '90s  
14 and I've been in and around real estate. I started young.  
15 But he taught me, if somebody says the dog ran away with  
16 your ear, don't run after the dog. Check your ear first.

17 And the thing that I've been saying  
18 (indiscernible) reading everything, Your Honor, and what Mr.  
19 Troop has stated on the record in different transcripts, and  
20 I have them all and I have what you, Your Honor, has said.  
21 And you read everything. You're very smart. The things  
22 that I've seen, Your Honor, there's so much  
23 misrepresentation to Your Honor. There has been fraud on  
24 this court and I'm not saying that lightly, Your Honor. And  
25 I will prove it. And if I have to bring a 60(b) motion, I

1 will, because I want -- I want the facts to come out, what's  
2 happening.

3 I want to go back to Stage. Stage filed  
4 bankruptcy. Non-debtor entity acquired the FF&E from  
5 bankruptcy court. There's 200,000 square feet of furniture  
6 in that building, Your Honor. And so the reason I thought  
7 it was a good idea to stage the space so when somebody walks  
8 in, they want to lease it. It's easier. But they've been  
9 handicapping me from leasing it. I have acquired several  
10 dozens of buildings successfully.

11 When they say money judgment -- by the way, Your  
12 Honor, I want to mention something. This is an I.M. Pei  
13 building. I.M. Pei is deceased. He's the architect that  
14 designed the pyramid in the Louvre. He's only done two  
15 buildings in Houston, the JPMorgan Tower and this building.  
16 This real estate is very, very unique. And what they want  
17 to do is suppress and depress the value and have a value  
18 damaging model.

19 Hilco -- let me go back to the FF&E. Hilco is  
20 representing to third parties and the public that the  
21 furniture is included in the sale. That's what they're  
22 representing. So these buyers that are out there are under  
23 the impression that all the furniture that's in the building  
24 that's not owned by the debtor is included in the sale. So  
25 trampling rights, left and right. Entities have rights,

1 people have rights and they can't just ignore those rights.

2 And that is going on here.

3 We have the evidence. I have the evidence where  
4 they are marketing. And I've asked for the marketing  
5 material so I could look at what the marketing materials and  
6 it's been said, no, wait until the sale motion in July.  
7 Well, that's been too late. There's false advertising going  
8 on, number one. Number two, the phone number on the  
9 building goes to a 99 cent real estate Hilco dedicated  
10 hotline for 99 cent store bankruptcy for the real estate.  
11 And I brought that to the attention. And I have a recording  
12 of that phone call that shows what number you call, the  
13 number that's on the building.

14 I want to just go back for a second, Your Honor,  
15 and mention a few things. Once the settlement agreement got  
16 signed, the building was virtually empty. But the  
17 settlement agreement supplanted the loan agreement,  
18 supplanted their rights. And the settlement agreement  
19 allowed me or my designee to acquire the note for \$26  
20 million, meaning I could bring another lender, I could bring  
21 in another bank to take them out. That was the deal.

22 So once I did that, I rolled up my sleeves. I  
23 started going to work every day trying to lease up the  
24 building in a challenging market. And I brought in DC  
25 Partners. They took an entire floor. They're the group

1     that developed the Allen and the Thompson hotel on Allen  
2     Parkway, brought them in, and they've taken a whole floor.  
3     I brought in other tenants. I brought in Regus interested  
4     in moving in, but they won't approve Regus. Regus is IWG.  
5     They've taken over a lot of the WeWork spaces. They're  
6     publicly traded. I've brought in lots of tenants that want  
7     to move into the building. It's a beautiful building. It  
8     deserves -- it's like shutting a chemical plant and saying,  
9     let's sell it while it's shut, then letting it run for a  
10    couple months and then selling it based on revenue, which is  
11    what our plan was.

12             It's very easy to say, you know -- but going back,  
13    at the end of 2022, I meet with a gentleman named Paul  
14    Caldwell, who represents a hedge fund. And his investor is  
15    a billionaire in Hong Kong who's interested in redeveloping  
16    the garage and making it automated. And he meets with me,  
17    first, is interested in taking space in the building. Then  
18    he becomes interested in buying the building. He had signed  
19    an LOI on Post Oak at the (indiscernible) building, but he  
20    loved the building that he came over.

21             Same thing with DC Partners (indiscernible) came  
22    over to meet me. He had signed an LOI. Phoenix Tower, I  
23    convinced him the building was so great, and it has  
24    furniture. So he signed a lease here. So I was doing the  
25    best to lease up the building. And it's been negative for

1     sure, but it'll be positive with tenants.

2             I got Paul Caldwell to come in. He liked the  
3     building. He makes an offer to buy the building for \$136  
4     million. He puts it in writing. It's signed. There's a  
5     recording of a meeting that R.J. Shannon had with Paul  
6     Caldwell that's supposedly privileged, we can't get, which  
7     we'd like to get. But Paul Caldwell, in that memo that Mr.  
8     Shannon provides, he says he didn't sign any agreement with  
9     the debtor. There was no agreement. He has his story.

10            Well, here's what really happened. At the end of  
11    September, he wants to buy the building. I start leasing up  
12    the building. He sees there's activity. He wants to take  
13    two floors and buy the entire building. The offer he makes  
14    is \$75 million for 55 percent. The debtor retains 45  
15    percent. He puts down \$35 million. The debtor gets a first  
16    lien, a carried interest of \$40 million at 7 percent at 20-  
17    year am. So the debtor retains 45 percent passively, and  
18    the building is sold or the asset is sold to Caldwell's  
19    group.

20            Publicly, the debt on the property is \$60, \$70  
21    million. If you look it up, that's what it is. The  
22    confidential agreement is confidential. It says the debt's  
23    26, I can buy for \$26 million. But no one knows that. So  
24    if you're buying a property from someone and their debt is  
25    publicly \$8 million, you're buying it for ten and then you

1 find out it's one, it's going to change your heart on what  
2 you want to do.

3 Mr. Caldwell signs an NDA. Mr. Caldwell then  
4 informed me that Pillsbury represents him in New York and  
5 they asked him to call the Houston office. Then we find out  
6 he's attempting to buy the debt. He later tells me that  
7 he's now uncovered -- he tells me this, Your Honor, that the  
8 bank has agreed to cut the debt in half. I didn't tell him  
9 that. So he has information the bank's taking less than  
10 what the public information is because of the confidential  
11 nature of our settlement.

12 At that point, Your Honor, the deal falls apart.  
13 I tried to bring another lender in, Security State Bank, and  
14 they're a witness as well. They went to committee. They  
15 approved the note on note because commercial lending is  
16 hard, CRV concentration. But lenders can make loan on loans  
17 because it doesn't fall under that C&I bucket.

18 The Bank of Kuwait files a receivership. The  
19 lender tells them that they're trying to get this deal  
20 closed. It's been frustrating efforts after and after and  
21 after. We ask for SNDAs, they won't provide them. We have  
22 tenants that want to move in. We ended up in the  
23 bankruptcy, Your Honor --

24 THE COURT: Mr. Choudhri --

25 MR. CHOUDHURI: The 26th --

1           THE COURT: Mr. Choudhri, anything you're telling  
2 me isn't evidence. It's argument. And you've been going on  
3 now for basically 35 minutes. I'm going to ask you to  
4 basically wrap up in the next five minutes.

5           MR. CHOUDHURI: Yes, Your Honor.

6           THE COURT: We have actual evidence to hear.

7           MR. CHOUDHURI: Yes, Your Honor.

8           THE COURT: Go ahead.

9           MR. CHOUDHRI: So Your Honor, what I wanted to  
10 mention is when you -- I've seen the redlines, and the  
11 redlines include the tax lien as a credit bid. There's that  
12 in there. And it was redlined, it was collapsed, it was  
13 truncated. But there's a tax lien component and there's a  
14 credit bid. So when Mr. Troop tells you that that credit  
15 bid is not the tax lien, well, that's not what the initial  
16 redline showed. What they did is they combined them. But  
17 when you look at the earlier draft, it's bifurcated. So you  
18 can see that is what it is.

19           The note and lien was sold. The thing that has to  
20 be done, Your Honor -- and I'm here and I can represent to  
21 Your Honor that we can solve this. We have a friendly  
22 lender. QB Loop Property has provided the wherewithal and  
23 the proof of funds and the liquidity to Mr. Troop and the  
24 trustee. And they're prepared to move forward and execute  
25 on the loan sale. And they'll come in and they'll step in

1 the shoes of the bank and they're prepared to pay the \$26  
2 million. So we've attempted to do that. There's been an  
3 offer, there's been an acceptance.

4 As far as the credit bid, when you introduce a  
5 credit bid, I can tell you from experience, Your Honor,  
6 people are not going to come, number one. When you have a  
7 process where Hilco markets the property three weeks and  
8 requires 10 percent nonrefundable just to be able to bid,  
9 that's 80 percent. Number two, all parties here, even in  
10 deposition, will agree if the building is more leased up,  
11 it's more valuable. Well, guess who's blocked the leases  
12 since the trustee has been appointed. The Bank of Kuwait,  
13 and we have evidence of that. They said they've got no  
14 leases. We've provided all these leases and they said  
15 they've got no leases. So they've artificially depressed  
16 the value so they can come in and get an advantage to credit  
17 bid.

18 A true market test -- and by the way, everything  
19 should be market tested. I agree with the market test.  
20 What is the largest asset, in my opinion, of this estate?  
21 It's the claim against the Bank of Kuwait. That needs to be  
22 market tested. It hasn't been. We've made offers and  
23 tendered offers for a million, \$700,000, half a million. No  
24 counters. No, we can't do it. We can't do it. We've asked  
25 the Bank of Kuwait, what consideration are they providing



1     for this release? \$200,000, \$300,000 is what they say. And  
2     Your Honor heard earlier that the consideration is they get  
3     to credit bid. That's the consideration. That doesn't make  
4     any logical sense.

5             And I can tell, Your Honor, I've been in real  
6     estate. I started real estate in '92 with my dad when I was  
7     12. I bought my first property in '95. I bought a lot of  
8     CMBS loans in 2008, '09, '10, '11. I've never -- in my  
9     opinion, if there's a true property sale, it should be a  
10    market, open market. People bid on it, whatever the market  
11    is. And if the Bank of Kuwait wants to bid on it, then they  
12    can do a round credit. They have the wherewithal.

13            But to say that, before we even get there, they  
14    have to have standing. It's my belief, Your Honor, that  
15    they don't have standing, they don't own the note and we're  
16    prepared to step in. And if Your Honor would like to enter  
17    an order ordering a sale of the note, or if they're willing  
18    to sell the note and honor the agreement at \$26 million,  
19    which was the deal, then we have a friendly lender that will  
20    step in, Your Honor. That's all I wanted to say.

21            And the other thing, Your Honor, I just wanted to  
22    say that the evidence will show that all of these actions  
23    were directed by the bank, 100 percent of these actions,  
24    hiring Hilco, hiring all of these people were directed. And  
25    the plan from day one was to auction the property and deal

1 with the claims later. We never had a chance. That's what  
2 I went back and I'll show Your Honor more times as well.  
3 Thank you, Your Honor.

4 THE COURT: All right.

5 MR. CHOUDHURI: Thanks for your time.

6 THE COURT: Thank you.

7 Mr. Troop, since we kind of went out of order,  
8 I'll let you respond to anything that Mr. Choudhri just said  
9 to the extent that you want to or need to.

10 MR. TROOP: Can I just have one minute, Your  
11 Honor?

12 THE COURT: Sure.

13 MR. TROOP: Cover up that mic in the middle.

14 THE COURT: Go ahead.

15 MR. TROOP: Thank you, Your Honor. Andrew Troop,  
16 again, from Pillsbury, for NBK. Your Honor, suffice it for  
17 now to say that there is very little that Mr. Choudhri  
18 espoused over the last 40 minutes with which the bank agrees  
19 or that is true. And if, as we go through today's hearing,  
20 what he said is in fact deemed by the court to be relevant,  
21 we reserve all of our objection in that regard. We will  
22 answer them as necessary. But again, Your Honor, this case  
23 needs to go forward. The credit bidding motion needs to be  
24 decided today. Confirmation should be decided today. And  
25 this case should be headed towards its end, not towards its

1 middle and additional expense and additional delay. Thank  
2 you.

3 THE COURT: Thank you.

4 Mr. Burks, you may call your first witness.

5 MR. BURKS: Your Honor, on behalf of 2425 WL, at  
6 this time we call our first witness as -- one moment, Judge  
7 -- where's my pen -- Mr. Michael Carter, Your Honor.

8 THE COURT: Mr. Carter, if you'll come forward,  
9 wherever you are. Mr. Carter, if you'll come to the podium  
10 first, I'll swear you in. Once I've sworn you in, you can  
11 be seated. Please raise your right hand to be sworn, sir.

12 MR. CARTER: Yes.

13 THE COURT: Do you swear or affirm to tell the  
14 truth, the whole truth and nothing but the truth, so help  
15 you God?

16 MR. CARTER: I do.

17 THE COURT: All right. Mr. Carter, you may be  
18 seated there. Please make sure you speak into the  
19 microphone.

20 Mr. Burks, as soon as he's seated, you may  
21 proceed.

22 MR. BURKS: Thank you, Judge.

23 DIRECT EXAMINATION OF MICHAEL CARTER

24 BY MR. BURKS:

25 Q Mr. Carter, you've already stated your name for the

1 record, I believe. Will you please tell the court what your  
2 current occupation is?

3 A I'm a relationship manager at the bank of the -- at the  
4 Bank of Kuwait.

5 Q Is it the Bank of Kuwait or the National Bank of  
6 Kuwait?

7 A The National Bank of Kuwait.

8 Q And where -- out of where do you office, sir?

9 A 299 Park Avenue.

10 Q In New York City?

11 A Yes.

12 Q And in your position as relations manager, what do you  
13 generally do?

14 A I seek out new business. I do the credit applications  
15 for that. I close the loans and I manage them.

16 Q All right. Have you ever testified in bankruptcy court  
17 before?

18 A You mean outside of this one?

19 Q Yes, sir.

20 A No.

21 Q And do you have -- what is your area of expertise? I  
22 understand what you do for the bank, and I appreciate that.  
23 What is your area of expertise in terms of valuation of  
24 properties? Do you have any expertise in that area?

25 A I have an appraisal certificate that I got when I was

1 at -- first started in banking at the Bank of New York.

2 Q Good, and how long ago was that?

3 A That was 1989.

4 Q Have you taken an appraisal or done an appraisal of the  
5 building at issue here in this case?

6 A Say that again. You asked me if I had done an  
7 appraisal?

8 Q Yes, sir. Have you done an appraisal?

9 A No.

10 Q Have you seen an appraisal?

11 A Yes.

12 Q Has the bank taken an appraisal or ordered an  
13 appraisal?

14 A Yes, several of them.

15 Q And have you looked at those?

16 A Yes.

17 Q Based on those appraisals, what do you believe is the  
18 value of the building at auction?

19 MR. FITZMAURICE: Objection, Your Honor.

20 THE COURT: Stand up, and what's the objection?

21 MR. FITZMAURICE: Your Honor, calls for  
22 speculation. The purpose of the auction is itself to set  
23 the value. The witness' opinion, as to -- the witness'  
24 opinion today as to what's going to happen tomorrow at the  
25 auction is not relevant to any issue in this -- in

1 connection with this proceeding.

2 THE COURT: I'll overrule the objection. Go  
3 ahead.

4 BY MR. BURKS:

5 Q Do you have an opinion as to the value of the building  
6 at issue in this case, sir?

7 A Our last appraisal said it was worth \$18.6 million and  
8 \$20 million as raw land.

9 Q All right, and that's your opinion of the value based  
10 on that appraisal, sir?

11 A I believe that's a reasonable number.

12 Q All right. Now have you reviewed this account, this  
13 loan account involving this case and involving this  
14 property?

15 A Yes.

16 Q And what is the amount that is due, in your opinion,  
17 based on National Bank of Kuwait's records currently?  
18 Currently, what is the amount due?

19 A The total amount due is approximately \$70 million.

20 Q All right, and you're not trying to round it up or give  
21 the exact number, but it's in the neighborhood of \$70  
22 million?

23 A Yes.

24 Q All right, sir. And are you aware of the Chapter 11  
25 plan that the National Bank of Kuwait has filed in this

1 case?

2 A Yes.

3 Q Have you reviewed bankruptcy claims outside of this  
4 case before?

5 A No.

6 Q Do you have general understandings of what the plan  
7 filed in this case has? And I'm asking you a general  
8 understanding within your own definition of whatever that  
9 means.

10 MR. FITZMAURICE: Objection, Your Honor,  
11 relevance. This is -- we're here on the motion to prohibit  
12 as to credit bidding.

13 THE COURT: I'll sustain the objection.

14 BY MR. BURKS:

15 Q Do you think that the National Bank of Kuwait's  
16 provision for credit bidding at this auction is a provision  
17 that's been propounded in good faith?

18 MR. FITZMAURICE: Objection, Your Honor, vague as  
19 to provision and also that whether -- that's a question that  
20 goes to confirmation of the plan, not to the credit bidding  
21 issue, which is what we're here on now.

22 THE COURT: I'll sustain the objection. Thank  
23 you.

24 BY MR. BURKS:

25 Q Is it your understanding that on the auction

1 proceeding, National Bank of Kuwait has a right to credit  
2 bid?

3 A Yes.

4 Q And what does a credit bid mean to you?

5 A That means that we bid our mortgage claim.

6 Q And when you credit bid, how much cash out of pocket  
7 will the bank pay?

8 A Typically there are fees involved in a credit bid.

9 Q Are there fees involved in this case?

10 A Yes.

11 Q And how much will the National Bank of Kuwait pay out  
12 of pocket?

13 A There are administrative fees as well as other payments  
14 we've agreed to make for some of the other creditors.

15 Q As part of the agreement to credit bid, are you saying  
16 that you've agreed to make payments to the Chapter 13 -- the  
17 Chapter 11 liquidating trustee?

18 MR. FITZMAURICE: Objection, Your Honor. Again,  
19 that's confirmation of the plan. That's not the motion to  
20 credit bid at the auction tomorrow.

21 MR. BURKS: Response?

22 THE COURT: Go ahead. Respond.

23 MR. BURKS: There is no way to separate out case  
24 law. If there are any ties to the conditions of credit,  
25 then there is no way to separate that out, Judge.



1           THE COURT: I think there is. So I'll sustain the  
2     objection. Thank you.

3           MR. BURKS: All right.

4     BY MR. BURKS:

5     Q     Looking at your declaration that was filed at Docket  
6     Number 514, sir --

7           MR. FITZMAURICE: Your Honor, same objection. The  
8     declaration was filed in support of confirmation of the  
9     plan.

10          THE COURT: I'll sustain the objection. I've read  
11     specifically the motion at 353. It's got to be part of that  
12     motion. I'm going to sustain the objection. Go ahead.

13     BY MR. BURKS:

14     Q     Does National Bank of Kuwait have cash sufficient to  
15     pay a \$71 million cash offer at auction? If you're not a  
16     credit bid, does National Bank of Kuwait have cash  
17     sufficient to pay \$71 million at auction?

18          MR. FITZMAURICE: Objection, Your Honor. I guess  
19     assumes facts not at evidence, that the motion is to credit  
20     bid and whether or not we should be allowed to credit bid,  
21     not whether the bank has sufficient resources to pay cash.  
22     We're focused on whether or not there is going to be a  
23     credit bid at the auction tomorrow.

24          THE COURT: I'll sustain the objection.

25     BY MR. BURKS:

1 Q Are you aware that your attorney in opening argument  
2 argued that the cash collateral final order has released all  
3 claims against National Bank of Kuwait?

4 MR. FITZMAURICE: Objection, relevance of the  
5 witness' knowledge of a legal argument that counsel made in  
6 the hearing.

7 THE COURT: I'll sustain the objection. I'm not  
8 sure what relevance that has, Mr. Burks.

9 MR. BURKS: The relevance is that under the case  
10 law, our argument is that this isn't a -- this is not a pure  
11 credit bid. This is a release. This is a credit bid plus  
12 cash in turn for a release of all cash causes of action, and  
13 you can argue that that is a confirmation issue. But --

14 THE COURT: I've already ruled on the objection.  
15 I'm not going to change my ruling based on what you just  
16 said. You can ask your next question, please.

17 MR. BURKS: Yes, Your Honor.

18 BY MR. BURKS:

19 Q In your experience as the banker for NBK, have you ever  
20 dealt with any other credit bids? Have you ever been in a  
21 situation where there's been credit bidding by NBK on any  
22 other properties?

23 MR. FITZMAURICE: Objection, relevance, Your  
24 Honor.

25 THE COURT: Mr. Burks, let me kind of -- and I'm

1 going to sustain the objection. But let's -- I reviewed the  
2 motion at 353 and I'm familiar with 363 and credit bidding.  
3 Okay. Basically there are several claims made in the  
4 motion. Okay. The first is that NBK has no interest in the  
5 property. Okay. Second, that there's been a breach of  
6 contract. Three, that there are claim objections pending.  
7 Okay. And fourth, that there's a sufficient dispute between  
8 the parties that I shouldn't allow credit bidding. That's  
9 really what I'm interested in hearing, okay, because that's  
10 what the motion says. All right. So if you want to move  
11 forward on those bases, which is what's pled, that's what  
12 I'd like to hear.

13 MR. BURKS: Yes, Your Honor.

14 THE COURT: Okay. Thank you.

15 BY MR. BURKS:

16 Q Mr. Carter, are you aware that the debtor -- are you  
17 aware that there's been litigation filed against National  
18 Bank of Kuwait in connection with this property in this  
19 case?

20 A Yes.

21 Q Has any of that mitigation been resolved, adjudicated?

22 MR. FITZMAURICE: Objection, Your Honor. Does  
23 counsel mean other than through the settlement agreement and  
24 the claims that were withdrawn with prejudice under the  
25 settlement agreement?

1 MR. BURKS: Response?

2 THE COURT: Go ahead, Mr. Burks.

3 MR. BURKS: The effect of that settlement  
4 agreement, the status of that settlement agreement is  
5 actually (indiscernible) litigation.

6 THE COURT: And I'm sure that's going to be part  
7 of the evidence. But I think to ask -- have him answer that  
8 question is probably unfair because he probably doesn't know  
9 what the legal effect of the settlement agreement is. But  
10 I'm going to hear it at some point in time, I'm assuming,  
11 from some witness.

12 MR. BURKS: But the question is, is he aware that  
13 there's -- that that agreement's in dispute --

14 THE COURT: Well, whether he's aware of it or not,  
15 it doesn't really make any difference to me, I mean, because  
16 you're going to raise the issue that somehow they breached  
17 it. What he thinks, I really don't care. It's what I  
18 think. Okay. So go ahead, ask the next question.

19 MR. BURKS: Yes, Your Honor.

20 THE COURT: Go ahead.

21 BY MR. BURKS:

22 Q What is your understanding of the effect of the credit  
23 bid if you're successful pursuant to a plan to credit bid in  
24 this property? What do you believe the effect of that will  
25 be on National Bank of Kuwait?

1 A We would get possession of the property.

2 Q Would you get anything else?

3 A I believe there's some cash held by the trustee from  
4 the building.

5 Q And you'd get that cash?

6 A We'd get that cash.

7 Q Would you get releases?

8 A We'd get releases from the (indiscernible) --

9 MR. FITZMAURICE: Objection, Your Honor. As a  
10 result of the credit bid or as a result of the confirmation  
11 of the plan? We're here on the credit bidding motion. The  
12 plan is a different topic.

13 THE COURT: Let's go ahead and make your question  
14 a little more clear because I think the credit bidding isn't  
15 going to affect any releases as best I know. Go ahead, ask  
16 your question.

17 BY MR. BURKS:

18 Q Are you aware of what the marketing was prior to in  
19 this bidding process?

20 A What the marketing was?

21 Q Yeah, the marketing of the property leading up to the  
22 auction, et cetera.

23 A Hilco was hired by the trustee to market the property.

24 Q And how long do they market it for?

25 A I believe it was about 45 days.

1 Q Forty-five days. In your opinion, is 45 days enough  
2 time to maximize auctions, auction bids, cash bids as  
3 against a credit bid?

4 MR. FITZMAURICE: Objection, Your Honor, to the  
5 question for calling for opinion evidence, calls for  
6 speculation as Mr. Carter is not here as an expert to offer  
7 opinion evidence.

8 THE COURT: I'll let you respond to that, Mr.  
9 Burks.

10 MR. BURKS: So the question is whether or not  
11 there's cause to prohibit a credit bid in this case. I  
12 think, frankly, based on the opening arguments, there is.  
13 That said, this is the man who's been presented by NBK as  
14 having knowledge of this case. I want to know -- I'm going  
15 -- my next question will be what they intend to do with the  
16 property.

17 THE COURT: I'll sustain his objection. You can  
18 ask your next question. Thank you.

19 BY MR. BURKS:

20 Q If the Bank of Kuwait is successful in its credit bid,  
21 do you intend to sell it for the amount of the credit bid or  
22 a higher amount?

23 MR. FITZMAURICE: Objection, Your Honor, relevance  
24 to whether or not -- whatever the bank is going to do after  
25 it acquires the property, if it does, is not relevant to

1       whether or not it's entitled --

2                   THE COURT:  I'll sustain the objection.

3       BY MR. BURKS:

4       Q       Why do a credit bid instead of a cash bid, sir?

5                   MR. FITZMAURICE:  Objection, relevance, Your  
6       Honor.

7                   THE COURT:  I'll sustain the objection.

8                   MR. BURKS:  I pass the witness, Your Honor.

9                   THE COURT:  Thank you.

10                  Mr. Fitzmaurice?

11                  MR. FITZMAURICE:  No questions for the witness,  
12       Your Honor.

13                  THE COURT:  Thank you, sir.  You may step down.

14                  Next witness, Mr. Burks?  Oh, excuse me.  I  
15       apologize.

16                  Sit back down, sir.  I'm going to let Mr.  
17       Choudhuri ask any questions he may have.

18                               DIRECT EXAMINATION OF MICHAEL CARTER

19       BY MR. CHOUDHURI:

20       Q       Hello, Mr. Carter.  How are you?

21       A       Good.

22       Q       Mr. Carter, do you remember -- do you recall giving  
23       your deposition.

24                   MR. FITZMAURICE:  Objection, relevance, Your  
25       Honor.

1 THE COURT: It's preliminary. I'll allow it.

2 MR. CHOUDHURI: Thank you.

3 THE COURT: Go ahead.

4 MR. CHOUDHURI: Thank you.

5 THE WITNESS: Yes.

6 BY MR. CHOUDHURI:

7 Q And everything in your deposition was truthful?

8 A Yes.

9 Q And you still stand by all the statements, all the  
10 answers in your deposition were truthful and under oath as  
11 if you were sitting here?

12 A Yes.

13 Q And you've given your deposition how many times in this  
14 matter?

15 MR. FITZMAURICE: Objection, relevance, Your  
16 Honor.

17 THE COURT: Again, I don't know where he's going.  
18 But I'm going to give him a little bit of leeway. If  
19 eventually he's going to ask a question about a deposition,  
20 you can raise your objection.

21 Go ahead. Do you want to project, Mr. Choudhri?

22 MR. CHOUDHURI: Yeah.

23 THE COURT: Okay. Then you can connect. Do you  
24 see a mic cord right in front of you --

25 MR. CHOUDHURI: So the left?



1 THE COURT: You can just put it up there.

2 MR. CHOUDHURI: While he's doing that, I'll start.

3 BY MR. CHOUDHURI:

4 Q Mr. Carter, do you recall testifying that you have not  
5 received any leases or proposals to lease up the building  
6 from trustee Chris Murray?

7 A Correct.

8 Q So since Judge Norman has appointed the Chapter 11  
9 trustee, you have not received any leases from the Chapter  
10 11, correct?

11 A Correct.

12 Q Has the Chapter 11 trustee asked you about SNDAs?

13 MR. FITZMAURICE: Objection, vague as to time.

14 BY MR. CHOUDHURI:

15 Q Since he was appointed -- well, let me back up. The  
16 Chapter 11 trustee was appointed by the Honorable Judge  
17 Norman on February 9, 2024, correct?

18 A I don't remember the specific date.

19 Q I can represent to you that on February 9th, on Friday,  
20 the Chapter 11 trustee was appointed by Judge Norman. And  
21 since that's happened, you have not received any leases for  
22 the property at 2425, correct?

23 A Correct.

24 Q And has the Chapter 11 trustee asked you for any SNDAs?

25 A No.

1 Q And the Bank of Kuwait, you mentioned in your  
2 deposition, is willing to, wants to do SNDAs, correct?

3 MR. FITZMAURICE: Objection, Your Honor, assumes  
4 facts not in evidence.

5 THE COURT: I'll sustain the objection.

6 BY MR. CHOUDHURI:

7 Q Didn't you in your deposition testify that the Bank of  
8 Kuwait wants SNDAs and welcomes them, something to that  
9 effect? I can get your deposition and show you. But do you  
10 recall that answer and question line?

11 MR. FITZMAURICE: Objection, Your Honor, relevance  
12 and also the witness is here. He can ask a question as  
13 opposed to saying is it true about something you testified  
14 at some point.

15 THE COURT: You can't impeach him. So ask the  
16 question.

17 BY MR. CHOUDHURI:

18 Q Does the Bank of Kuwait provide SNDAs when its  
19 borrowers request SNDAs?

20 MR. FITZMAURICE: Objection, Your Honor, to the  
21 extent we are talking about a borrower other than the one at  
22 issue here.

23 THE COURT: Be more specific, Mr. Choudhri.

24 BY MR. CHOUDHURI:

25 Q The borrower -- we can agree, Mr. Carter, the borrower

1 is Galleria 2425 Owner, LLC, correct? The debtor and the  
2 borrower is the same?

3 A Yes.

4 Q So going back to my last question --

5 MR. CHOUDHURI: For the gentleman, I don't know if  
6 you can read it -- can it be read (indiscernible) --

7 THE COURT: Yeah. It doesn't work that way here.  
8 Everything we're saying is being electronically recorded,  
9 but there's no way to read back anything on the record.

10 BY MR. CHOUDHURI:

11 Q Does the National Bank of Kuwait provide SNDAs?

12 THE COURT: To whom? When? Be more specific.

13 BY MR. CHOUDHURI:

14 Q If the trustee -- if the Chapter 11 trustee asked you  
15 to provide an SNDA, would that be a hurdle for the Bank of  
16 Kuwait to provide an SNDA?

17 MR. FITZMAURICE: So objection, Your Honor, calls  
18 for speculation, assumes facts not in evidence. It assumes  
19 that there actually -- there has been a request. What would  
20 the bank do in this hypothetical situation?

21 THE COURT: I'll sustain the objection. I think  
22 the testimony at this point was if the trustee hasn't  
23 presented any. So there's no support for your question.  
24 Ask another question, please.

25 BY MR. CHOUDHURI:

1 Q So we're clear, you haven't received any SNDAs since  
2 the appointment of the trustee in this case?

3 A Correct.

4 Q And what about before the appointment of the trustee?  
5 Have you received any SNDAs from the borrower/the debtor?

6 MR. FITZMAURICE: Objection, relevance to the  
7 bank's credit bidding at the auction tomorrow.

8 THE COURT: What's the relevance, Mr. Choudhri?

9 MR. CHOUDHURI: It goes back to motivation, Your  
10 Honors. Their motivation has been to frustrate, thwart  
11 efforts so they could depress the value and be the  
12 beneficiary at the auction.

13 THE COURT: I'll sustain the objection. And  
14 again, I'll tell you what I told Mr. Burks. I've read your  
15 motion. All right. And your motion has specific  
16 allegations in it. As far as testimony, I'm more than happy  
17 to hear any testimony you have regarding what you've pled.  
18 So just limit it to that. Thank you.

19 BY MR. CHOUDHURI:

20 Q The Bank of Kuwait has not received any offers to buy  
21 the note, correct?

22 MR. FITZMAURICE: Objection, Your Honor, relevance  
23 to credit bidding.

24 THE COURT: I'll sustain the objection.

25 BY MR. CHOUDHURI:

1 Q Mr. Carter, is it true that the Bank of Kuwait -- Mr.  
2 Carter, on the credit bid, is the Bank of Kuwait aware that  
3 the trustee wanted to limit the credit bid in any way, shape  
4 or form?

5 A I don't know.

6 Q Who would know?

7 A I assume the trustee.

8 Q Mr. Carter, you're aware that you were provided a  
9 deposition notice of, I think, a 30(b)(6) with eight topics.  
10 Do you recall that?

11 MR. FITZMAURICE: Objection, Your Honor, relevance  
12 to the credit bidding motion and the witness' testimony here  
13 today.

14 THE COURT: Well, I know, Mr. Choudhri, you have  
15 an argument relative to plan confirmation. This is not plan  
16 confirmation. And I've said as much, that you can raise  
17 those issues in plan confirmation. Now is not the time.

18 MR. CHOUDHURI: Your Honor, in that deposition  
19 notice, one of the topics that was -- all the topics were  
20 not objected to. One of the topics was credit bidding. So  
21 we could ask about (indiscernible) --

22 THE COURT: But again, you filed a motion that  
23 specifically says you object to credit bidding based on  
24 these grounds. And those are the -- that's what I want to  
25 hear evidence about. Okay. So please limit it to what

1     you've pled. I mean, you have a pleading in front of me and  
2     it specifically talks about NBK doesn't have an interest in  
3     the property. All right, that basically there's been a  
4     breach of contract, that there are claim objections pending.  
5     There's sufficient dispute between the parties that I  
6     shouldn't allow credit bidding. That's what I want to hear.  
7     Okay. So please focus on those issues because that's how  
8     I'm going to make a decision on credit bidding. All right.  
9     Go ahead.

10    BY MR. CHOUDHURI:

11    Q     So who would decide the credit bid, Mr. Carter, at the  
12    National Bank of Kuwait? Who would decide how much to  
13    credit bid?

14           MR. FITZMAURICE: Same objection, Your Honor, as  
15    to relevance.

16           THE COURT: I'll sustain the objection as not  
17    relevant to what I want to hear, Mr. Choudhri.

18    BY MR. CHOUDHURI:

19    Q     What is the amount under the settlement agreement or  
20    any subsequent agreement that the Bank of Kuwait agree to be  
21    paid either in assignment of its (indiscernible) or full  
22    satisfaction of its debt?

23           MR. FITZMAURICE: So Your Honor, objection as to  
24    relevance in the credit bid. It assumes facts not in  
25    evidence. It's a compound question.

1 THE COURT: And the document speaks for itself.

2 MR. TROOP: And the -- thank you.

3 THE COURT: I'll sustain the objection.

4 BY MR. CHOUDHURI:

5 Q Are you aware of an amount of \$26,038,000? Let me  
6 withdraw that. The outcome of any litigation has not been  
7 determined yet as in the dispute between myself and the Bank  
8 of Kuwait, correct?

9 MR. FITZMAURICE: Objection, Your Honor, vague as  
10 to time, given the provisions of the settlement agreement  
11 which reflect a waiver of claims and stipulations of  
12 dismissal with prejudice of pending lawsuits.

13 THE COURT: Mr. Choudhri, whatever happened in the  
14 underlying litigation or didn't happen in the underlying  
15 litigation, there are probably, I'm assuming, documents that  
16 evidence what happened or didn't happen, and I'm happy to  
17 hear them and see them in evidence. This may or may not be  
18 the witness to do that through. Okay. But again, what he  
19 thinks relative to what the documents say doesn't mean a  
20 whole lot of difference to me because it's what I think, and  
21 so I really need to see them and then you can ask questions  
22 about them. Okay, and you may have -- you may have  
23 legitimate, valid disputes. I'm not sure this is the  
24 witness that's going to get you where you want to go. Okay.  
25 Go ahead.

1 BY MR. CHOUDHURI:

2 Q Does the Bank of Kuwait intend to have a United States  
3 headquarters in this building?

4 MR. FITZMAURICE: Objection, Your Honor,  
5 relevance.

6 THE COURT: Mr. Choudhri, again, and I hate to go  
7 back, I'm worried about what's in your motion. I don't know  
8 how that has any relevance to anything you've pled. I'll  
9 sustain the objection and ask you to move on and concentrate  
10 on what's in the motion.

11 BY MR. CHOUDHURI:

12 Q Mr. Carter, you testified in the deposition the plan is  
13 -- the plan and the sale motion are part and parcel. Do you  
14 recall that?

15 MR. FITZMAURICE: Objection, Your Honor. He's  
16 using the transcript, I guess, to try to impeach him about  
17 something he hasn't testified to and also relevance.

18 THE COURT: So you can ask him questions, sir.  
19 You can't impeach him until he's basically said something.  
20 Okay. Go ahead.

21 BY MR. CHOUDHURI:

22 Q Bank of Kuwait's plan is tied to the sale motion,  
23 correct?

24 MR. FITZMAURICE: Objection, Your Honor. That's  
25 confirmation -- I think a confirmation issue, not whether



1 the bank can credit bid.

2 THE COURT: It is, and I'll sustain the objection.

3 Again, we're here just on credit bidding. We're going to  
4 get to plan confirmation, but we've got to get through this  
5 credit bid motion today. We may be here until 2:00 in the  
6 morning. You're not making things any easier. I'm going to  
7 warn you one more time. You need to stick to issues that  
8 are relevant. If you continue to ask questions that are  
9 nonrelevant, I'm just going to tell you to sit down. Okay?  
10 So, fair warning. Go ahead.

11 BY MR. CHOUDHURI:

12 Q Who owns the note of lien as we sit here today? What  
13 party?

14 A NBK.

15 Q And is that a disputed -- is that a disputed fact? Is  
16 that under dispute, the ownership of the note?

17 A That's a fact.

18 Q Is it under a -- is there a pending dispute as to who  
19 owns the note of lien today?

20 A I understand there's some filing about it.

21 Q So is there a challenge? Is it on dispute?

22 A What I'm saying is there's a filing about it.

23 Q So as we sit here today, the minimum bid, or there's a  
24 stalking horse bid, which has a credit bid component in it,  
25 right?

1 A Yes.

2 Q And can you explain how that works, please, so I  
3 understand, we understand? What are the bid increments from  
4 the stalking horse agreement on the sale motion that was  
5 entered?

6 MR. FITZMAURICE: So objection, Your Honor,  
7 relevance as to whether or not the bank is -- whatever the  
8 overbid is, it is not relevant to whether the bank is  
9 entitled.

10 THE COURT: I agree. I'll sustain the objection.  
11 Again, Mr. Choudhri, another warning. You need to ask  
12 questions that are relevant to the issue of whether there  
13 should actually be credit bidding or not. That's what I'm  
14 interested in hearing. All right. Go ahead.

15 BY MR. CHOUDHURI:

16 Q Is the bank willing to refrain from credit bidding to  
17 allow an open market so where buyers can make offers and not  
18 be handicapped by an imputed credit bid?

19 MR. FITZMAURICE: So objection, Your Honor,  
20 assumes facts that are not in evidence. It calls for  
21 speculation. It's also not relevant to whether or not the  
22 bank should be entitled to credit bid in the first place.

23 THE COURT: I'll sustain the objection.

24 BY MR. CHOUDHURI:

25 Q Mr. Carter, do you know anything about the FF&E in the

1 building?

2 MR. FITZMAURICE: Same objection, Your Honor.

3 THE COURT: I'll sustain the objection. This is  
4 your last warning, Mr. Choudhri. I need questions that are  
5 relevant to the motion. All right. Credit bid motion. If  
6 you have a dispute as to ownership of the personal property  
7 in the building, that has nothing to do with credit bidding.

8 BY MR. CHOUDHURI:

9 Q If the bank credit bids, does that include -- does the  
10 bank's credit bid include furniture in the building?

11 MR. FITZMAURICE: So, same objection, as to  
12 relevance.

13 THE COURT: Sustain the objection. And I'm going  
14 to give you one final warning, Mr. Choudhuri, and I'm happy  
15 to print the motion that I've read, that I'm looking at for  
16 you to look at if you want to take a short break and read  
17 it.

18 MR. CHOUDHURI: Thank you. Yeah.

19 THE COURT: Okay. So that you ask relevant  
20 questions.

21 MR. CHOUDHURI: I appreciate it.

22 THE COURT: You're one more question from me  
23 cutting you off.

24 MR. CHOUDHURI: I appreciate it.

25 THE COURT: So bear with me for one second. All

1 right. So the record's clear, I'm printing ECF 353. I'm  
2 going to hand it to Mr. Choudhri. We're going to take a 10-  
3 minute break and we'll come back and Mr. Choudhri can  
4 continue his examination. You may take a minute  
5 (indiscernible) --

6 MR. BURKS: Thank you, Your Honor. May I approach  
7 Mr. Choudhuri?

8 THE COURT: You may.

9 MR. TROOP: No, that's the one that I filed. The  
10 one that is removed is --

11 THE COURT: All right. Mr. Burks, you need to be  
12 aware that those mics are picking up everything you say.  
13 Everything you've been talking about is all over the record.

14 MR. BURKS: I'm sorry. Thank you, Judge.

15 THE COURT: So if you have discussions, you either  
16 want to mute your mics or you want to take it outside.

17 MR. BURKS: How do I mute my mic, Your Honor? I  
18 can't -- thank you, Judge. I saw a mute button on the  
19 screen and foolishly I touchscreen it, Judge. I apologize.  
20 Thank you, though.

21 CLERK: All rise.

22 (Recess)

23 CLERK: All rise.

24 THE COURT: Please be seated.

25 Mr. Carter, I'll remind you that you're still

1 under oath. Please be seated, sir.

2 All right. Mr. Choudhri, next question, please.

3 BY MR. CHOUDHURI:

4 Q Mr. Carter, you're most familiar with the claims  
5 against NBK by the debtor, correct?

6 MR. FITZMAURICE: Same relevance objection, Your  
7 Honor, Mr. Carter's familiarity with claims by NBK against  
8 the debtor.

9 THE COURT: I agree. It's not relevant.

10 BY MR. CHOUDHURI:

11 Q Was one of the topics in the 30(b)(6) claims against  
12 the bank in credit bidding?

13 MR. FITZMAURICE: Same objection as to relevance,  
14 Your Honor.

15 THE COURT: I'm not sure I understand the  
16 question. Go ahead. Rephrase the question.

17 MR. CHOUDHURI: Sorry, Your Honor. So --

18 THE COURT: And Mr. Choudhuri, I'm confused.  
19 You're talking about the bank's claims against the debtor or  
20 the debtor's claims against the bank?

21 MR. CHOUDHURI: The debtor's claims against the  
22 bank.

23 THE COURT: Because the first question you asked  
24 was did the bank have any claims against the debtor, which  
25 is the reason I overruled it on relevance.

1 MR. CHOUDHURI: Sorry.

2 THE COURT: So just make sure that you understand  
3 what you're asking. Go ahead.

4 BY MR. CHOUDHURI:

5 Q Mr. Carter, you sat for a 30(b)(6) deposition with  
6 eight topics, and one of those topics was credit bid and  
7 claims against the bank by the debtor. Do you recall that?

8 MR. FITZMAURICE: Objection, Your Honor,  
9 relevance. But also if there is --

10 THE COURT: Compound question. Just one question  
11 at a time, Mr. Choudhri. You can't ask multiple questions  
12 in the question.

13 BY MR. CHOUDHURI:

14 Q You were the designated representative with the most  
15 knowledge for 30(b)(6) deposition, correct?

16 MR. FITZMAURICE: Objection, Your Honor, misstates  
17 the -- it calls for a legal conclusion that misstates the  
18 applicable rule. It's also not relevant to the issue of  
19 whether the bank should be allowed to credit bid tomorrow.

20 THE COURT: I'll sustain the objection. Again,  
21 Mr. Choudhuri, let's focus on the motion which I gave you a  
22 copy of. You have it in your hand. Ask your questions.

23 BY MR. CHOUDHURI:

24 Q Who would have the most knowledge --

25 THE COURT: Finish your question.

1 BY MR. CHOUDHURI:

2 Q Has the court found what the claim is, what the amount  
3 of claim is, Mr. Carter? Has there been a finding of what  
4 the amount of the claim is as we sit here today?

5 MR. FITZMAURICE: Objection, Your Honor,  
6 relevance. I don't think the court needs to determine the  
7 exact amount of the claim in order for the bank to be able  
8 to credit bid.

9 THE COURT: I'll allow the question. I think it  
10 dances around the issue, but I'm not sure what he -- again,  
11 Mr. Choudhri, what he thinks relative to what I've done, I  
12 know what I've done. Okay. I know what I'm going to do  
13 hopefully after I hear all the evidence. What he thinks  
14 really doesn't make any difference to me. I mean, I know  
15 that I haven't ruled on any of the claim objections. You  
16 don't need evidence as to that. I'm aware of that. Okay.

17 BY MR. CHOUDHURI:

18 Q If the bank is successful as a credit bidder, and it's  
19 found that the bank doesn't have a claim, how does the bank  
20 intend to deal with that?

21 MR. FITZMAURICE: So objection as to relevance.  
22 What might happen after the auction is not relevant to  
23 whether or not the bank can credit bid at the auction.

24 THE COURT: I agree. I'll sustain the objection  
25 based on relevance.

1 BY MR. CHOUDHURI:

2 Q Are you aware what the impact of credit bidding does?

3 MR. FITZMAURICE: Objection, vague, and also --

4 THE COURT: And I'll sustain the objection. It's  
5 vague and I'm not sure. Again, Mr. Choudhri, so maybe it  
6 will help you if I give you my viewpoints on this to move  
7 this along. Okay. You're going to have to show cause for  
8 their not -- for credit bidding not to be allowed. Okay.  
9 This witness probably can't prove up your case. Okay.

10 You're going to have to basically give me some sort of  
11 evidence that I agree with you that you've got cause that  
12 there shouldn't be credit bidding. I don't think this  
13 witness is going to get you to where you want to go. Okay.  
14 You may have witnesses which will get you where you want to  
15 go. But he's not that person. I promise. Okay.

16 MR. CHOUDHURI: Okay.

17 THE COURT: All right. Ask your next question.

18 BY MR. CHOUDHURI:

19 Q Mr. Carter, are you aware that the bank received an  
20 offer contract from Holland & Knight for \$85 million?

21 MR. FITZMAURICE: I wanted to make sure the  
22 question was done before. But objection as to relevance,  
23 assumes facts that are not in evidence. If there is such an  
24 offer, the best evidence rule suggests that we should look  
25 at the document itself.



1 THE COURT: I'll sustain the objection.

2 BY MR. CHOUDHURI:

3 Q Mona Dajani represents the Bank of Kuwait, correct?

4 MR. FITZMAURICE: Objection, Your Honor, relevance  
5 as to whether or not the bank can credit bid tomorrow.

6 THE COURT: I'll sustain the objection. Mr.  
7 Choudhri, we're back to where we were before, which is --

8 MR. CHOUDHURI: Sure.

9 THE COURT: -- I've given you the motion. I've  
10 given you lots of leeway. You're a question away from being  
11 cut off. Okay.

12 MR. CHOUDHURI: Your Honor, I appreciate it. What  
13 I'm trying to get in and establish is that there's been  
14 offers that the Bank of Kuwait says they haven't received.  
15 Yet they received them. The Bank of Kuwait has received  
16 them. And they've not approved them or responded --

17 THE COURT: If there is an offer and it's been  
18 made, then the offer is the best evidence, not his testimony  
19 as to what he knows. Okay.

20 MR. CHOUDHRI: Okay. I'm almost done.

21 THE COURT: You will be done soon. So ask your  
22 next question. Thank you.

23 BY MR. CHOUDHURI:

24 Q Mr. Carter, are you aware of -- so the bank has no  
25 limit on their credit bid? As we sit here today, the bank

1 can credit bid up to what amount?

2 A We can credit bid up to the full amount we're due.

3 Q Which is roughly how much?

4 A Again, roughly \$70 million.

5 Q \$70 million. So despite anybody coming to the auction,  
6 the bank can credit bid up to \$70 million? They have a  
7 right to do so?

8 A Yes.

9 Q And you don't believe that will affect the buyer pool  
10 or the marketing of the property in any way?

11 MR. FITZMAURICE: Objection, Your Honor,  
12 relevance. Mr. Carter's view as to that is not relevant to  
13 whether the bank --

14 THE COURT: I sustain the objection. Again, one  
15 more time --

16 MR. CHOUDHURI: Okay.

17 THE COURT: -- one last question. If I get a  
18 relevance objection and I sustain it, you're done.

19 BY MR. CHOUDHURI:

20 Q What does the bank intend to credit bid?

21 MR. FITZMAURICE: Objection, Your Honor.

22 THE COURT: It's not relevant, Mr. Choudhri. The  
23 issue is whether they get to credit bid, not how much that  
24 bid would be. You're done. Sit down. Thank you.

25 MR. CHOUDHURI: Thank you.

1 THE COURT: Thank you.

2 Mr. Fitzmaurice, did you have any questions based  
3 on his direct examination?

4 MR. FITZMAURICE: We do not, Your Honor. To the  
5 extent that we put on a case on this motion, we reserve the  
6 right to call Mr. Carter in that case. But we have no  
7 questions now.

8 THE COURT: All right. You may step down, and I  
9 apologize, but you're going to have to wait in court.

10 Mr. Burks, next witness.

11 MR. BURKS: Your Honor, at this time, WL -- Your  
12 Honor, may I please be excused for about ten seconds?

13 THE COURT: Sure.

14 MR. BURKS: May I be excused, please?

15 THE COURT: That's fine.

16 MR. BURKS: Whoever provided that water, I thank  
17 you.

18 Your Honor, at this time, I call to -- on behalf  
19 of 2425 WL, I call via Zoom --

20 MR. SATHER: Russell Ingram.

21 MR. BURKS: Is he on the Zoom?

22 MR. SATHER: Yes.

23 MR. BURKS: -- via Zoom, Mr. Russell Ingram, Your  
24 Honor.

25 THE COURT: All right. Mr. Ingram needs to show

1 up.

2 MR. BURKS: Well, that's what I was just trying to  
3 find out, where he is.

4 MR. INGRUM: (indiscernible) I am (indiscernible)  
5 --

6 THE COURT: Hold on one second. Mute everyone  
7 right now. Just mute everyone.

8 AUTOMATED VOICE: Conference muted.

9 THE COURT: There were connection instructions for  
10 him to follow.

11 MR. FITZMAURICE: So Your Honor, we would object  
12 and we'd ask for a proffer as to the substance of Mr.  
13 Ingrum's testimony. To be candid, we have no idea who he  
14 is.

15 THE COURT: Then I'd like to hear it from him  
16 first. So let's -- I'll rule on your objection. Is that  
17 Mr. Ingrum there? Yes?

18 MR. BURKS: Do we have audio for Mr. Ingrum?

19 THE COURT: We don't because we don't know what  
20 number he's calling in on because he didn't say his name.

21 CLERK: I'm looking.

22 THE COURT: Can you find him?

23 CLERK: I'm looking. Gary --

24 THE COURT: Let's unmute everyone and see if we  
25 can get him to --

1           AUTOMATED VOICE: Conference unmuted.

2           MR. INGRUM: All right. How about now?

3           THE COURT: Where is he?

4           CLERK: He's the very last one.

5           THE COURT: Okay. Add his name, and mute everyone  
6 else.

7           CLERK: I did.

8           THE COURT: All right. Mr. Ingram, will you  
9 please raise your right hand to be sworn?

10          MR. INGRUM: Yes, sir.

11          THE COURT: Do you swear or affirm to tell the  
12 truth, the whole truth of nothing but the truth, so help you  
13 God?

14          MR. INGRUM: Yes, sir.

15          THE COURT: All right. Go ahead.

16          MR. BURKS: Thank you, Your Honor.

17                 DIRECT EXAMINATION OF RUSSELL INGRUM

18 BY MR. BURKS:

19 Q     Mr. Ingram, I'm going to talk a little slower than I  
20 normally do because I don't know if there's a time lapse.  
21 If you do not understand the question, please state that you  
22 didn't hear it or don't understand it. All right, sir?

23 A     Yes, sir.

24 Q     Please state your name for the record.

25 A     Russell Ingram.

1 Q And how are you employed?

2 A I'm employed by CBRE, A commercial real estate company.

3 Q And what is CBRE?

4 A CBRE is the world's largest commercial real estate  
5 services company. They do everything in the real estate  
6 business all over the world.

7 Q All right. Do you have any knowledge -- and how long  
8 have you been working there, sir?

9 A I've been there 27 years.

10 Q And what do you do for CBRE, sir?

11 A My job is to sell office buildings. That's all I do.

12 Q And do you sell it in what context? In what manner do  
13 you sell office buildings, sir?

14 A I'm not sure I follow the question. Like the best  
15 example is like somebody -- like a realtor sells a house,  
16 you get hired by the owner of the house, you market the  
17 house and then you find buyers and you run the process.

18 Q All right. So you sold --

19 A Same process (indiscernible) --

20 Q Are these residential homes or are these commercial  
21 properties?

22 A Forgive me. I just do office. I was trying to give an  
23 analogy that may be easier to understand. I just sell  
24 office buildings. That's all I do.

25 Q All right, and do you sell them only on the open

1 market, that is, with realtors trying to find buyers? In  
2 what manner do you sell office buildings?

3 A I sell office buildings on a "market". There are  
4 thousands of buyers across the United States and across the  
5 world. Our job is to understand who they are and reach out  
6 to them when we have an office building that we are  
7 attempting to sell.

8 Q All right. Have you been involved in any sales of  
9 office buildings that involve bankruptcy auctions?

10 MR. FITZMAURICE: So Your Honor, I'm going to  
11 object again to the witness' testimony. It appears designed  
12 to potentially offer evidence that might conceivably support  
13 some objection by the Choudhri parties to confirmation. But  
14 the issue on this motion is whether or not the bank can  
15 credit bid. And what does this witness have to say about  
16 the claims that are between the parties which support the  
17 objection that they filed?

18 THE COURT: I'll overrule the objection. You may  
19 proceed. Go ahead.

20 MR. BURKS: So Mr. --

21 THE WITNESS: I've done one sale out of bankruptcy  
22 court.

23 BY MR. BURKS:

24 Q And in that sale, have you -- were you ever involved --  
25 in that sale, was there a credit bid involved?

1       A       There was not a credit bin.

2       Q       What do you know about credit bid, sir, experience-  
3       wise?

4               MR. FITZMAURICE:  Objection, relevance, Your  
5       Honor, to whether or not --

6               THE COURT:  I'll sustain the objection.  It's not  
7       relevant.

8       BY MR. BURKS:

9       Q       In your opinion, if there is a non-cash credit bid  
10      involved in the sales process, does that have an effect on  
11      the ultimate sales price on the open market?

12              MR. FITZMAURICE:  Objection, Your Honor, to the  
13      extent that he's being offered as an expert to give opinion  
14      evidence.

15              MR. BURKS:  No.  I'm not offering him as an  
16      expert, Judge.

17              MR. FITZMAURICE:  You --

18              MR. BURKS:  I'm offering his opinion based on 27  
19      years of selling office buildings.

20              MR. FITZMAURICE:  That's an expert opinion, Your  
21      Honor.

22              THE COURT:  I'll sustain the objection.

23              MR. BURKS:  Is your ruling that I cannot ask this  
24      witness what the effect of a credit bid is on the sales of  
25      business --



1 THE COURT: That's my ruling.

2 MR. BURKS: Buildings?

3 THE COURT: I just ruled. Thank you.

4 MR. BURKS: Nothing further.

5 THE COURT: All right. Thank you, sir. Thank you  
6 for appearing.

7 Oh, I apologize. Mr. Choudhri, do you have  
8 questions of this witness?

9 MR. CHOUDHRI: I'm going to short-circuit this.  
10 I'm not allowed to ask questions about his opinions at all?

11 THE COURT: No. You can't ask those questions.

12 MR. CHOUDHURI: Okay.

13 THE COURT: Do you have any other questions you  
14 want to ask him?

15 MR. CHOUDHRI: No. About the building?

16 THE COURT: I'm not sure questions about the  
17 building have any relevance to credit bidding.

18 MR. CHOUDHURI: The court's (indiscernible) credit  
19 bidding.

20 MR. BURKS: Who do you want now?

21 THE COURT: That's not relevant.

22 MR. CHOUDHURI: Okay.

23 THE COURT: Thank you.

24 Mr. Fitzmaurice?

25 MR. FITZMAURICE: No questions for the witness,

1 Your Honor.

2 THE COURT: All right. Thank you.

3 Next witness, Mr. Burks.

4 MR. BURKS: Your Honor --

5 THE COURT: Thank you, Mr. Ingram.

6 MR. BURKS: Your Honor, at this time I want to try  
7 -- I don't know if I'll be successful, Judge. I want to try  
8 and --

9 THE COURT: I just want you to call a witness, Mr.  
10 Burks.

11 MR. BURKS: Well, I may be able to short-circuit  
12 two of my witnesses if I'm allowed to ask the court to take  
13 judicial notice of the existence, not the truth or veracity,  
14 but the existence of certain pleadings regarding the  
15 disputes involved because it's got to be part of the record  
16 here and I'd rather just have the parties --

17 THE COURT: I'd be happy to take judicial notice  
18 that there are pleadings on file that basically are  
19 disputes. I'm happy to do that, Mr. Burks.

20 MR. BURKS: All right. May I offer them, Judge?

21 THE COURT: You may.

22 MR. BURKS: Your Honor --

23 THE COURT: Do you have an ECF number or are you  
24 going to -- I'm assuming they're on the docket so I can see  
25 them.

1           MR. BURKS: They're on the docket, but they're  
2   also on the exhibit numbers. Do you want to go -- do you  
3   want to take them off the docket, or would you like to take  
4   them exhibit by exhibit?

5           THE COURT: I just would like the record to know  
6   which exhibits I should be looking at by ECF number.

7           MR. BURKS: What are the ECF numbers?

8           THE COURT: And I know that there -- I know that  
9   there is one attached to the motion itself at ECF 353. It's  
10  an attachment to the motion.

11          MR. BURKS: But that's not all these.

12          THE COURT: So I certainly can take judicial  
13  notice of the claim objections. I can also take judicial  
14  notice of the adversary proceedings.

15          MR. BURKS: Your Honor, I -- yes, Your Honor. So  
16  I'm offering you -- I'm requesting that you take judicial  
17  notice of Proof of Claim Number 13, which is 499-2, Proof of  
18  Claim Number 14, which is --

19          THE COURT: Whoa, whoa, whoa, whoa. We've got to  
20  just slow down because I'm going to write it down. So,  
21  proof of claim what?

22          MR. BURKS: Proof of Claim Number 13.

23          THE COURT: Thirteen.

24          MR. BURKS: And Proof of Claim Number 14, which is  
25  499.

1           THE COURT: Well, if they're proof of claim -- if  
2 they're on the claims docket as 13 and 14, that's fine. I  
3 can take judicial notice on that, if they've been filed and  
4 they're pending.

5           MR. BURKS: Yes. Your Honor, Amended Objection to  
6 Proof of Claims 13 and 14.

7           THE COURT: At?

8           MR. BURKS: I believe it's 499-4. Is it, Reese?

9           MR. BAKER: Where's the (indiscernible) where I  
10 was writing down some of these ECF numbers? This is a  
11 little embarrassing. I need the ECF numbers.

12          MR. BURKS: 499-4. I was intending to present  
13 them on the screen as we rolled through it.

14          THE COURT: Fine. You can do it if you want to.  
15 I'm more than happy to let them connect and project them if  
16 you want to.

17          MR. BURKS: That would be easier.

18          THE COURT: All right. So bear with me one  
19 second. Where do you want to connect from?

20          MR. BURKS: Mr. Baker, where would you like to  
21 connect from? Despite my fumbling and my apologies to  
22 counsel and my slight embarrassment, Judge, this will be  
23 faster than the two witnesses --

24          THE COURT: That's fine. Go ahead.

25          MR. BURKS: Yeah. But that doesn't tell me what

1 ECF number it is.

2 THE COURT: (indiscernible) you're not going to be  
3 tell what it is.

4 MR. BAKER: That's 499-2.

5 MR. BURKS: Proof of Claim Number 13, which is  
6 499-2, Your Honor. Next --

7 THE COURT: If it's on the claims register, why  
8 don't we just do it by the claims register? Claim 13.

9 MR. BURKS: All right, Your Honor.

10 THE COURT: Okay. Thank you.

11 MR. BURKS: Claim 14 on the claim register.

12 THE COURT: All right. I'll take that one, too.  
13 Thank you.

14 MR. BURKS: Amended Objection to Claims 13 and 14  
15 on the claim register.

16 MR. FITZMAURICE: I think that'd be on the docket.

17 MR. BURKS: Reese? I can't tell if they're on the  
18 docket or not.

19 THE COURT: Let's look --

20 MR. FITZMAURICE: Your Honor, I think the amended  
21 objection --

22 THE COURT: Bear with me for one second.

23 MR. FITZMAURICE: -- is ECF 284.

24 THE COURT: Bear with me for one second.

25 MR. BURKS: I need ECF numbers for Numbers 1

1 through 11.

2 MR. BAKER: Yeah, 500 -- Your Honor, this amended  
3 objection --

4 THE COURT: Bear with me, Mr. Baker.

5 MR. BAKER: I'm sorry. I'm sorry.

6 THE COURT: There's the claim register. I think  
7 that's what you want.

8 MR. BURKS: It is, Judge. Success. Can I start  
9 over with --

10 THE COURT: Go ahead. Go ahead.

11 MR. BURKS: You know, I'd ask this court to take  
12 judicial notice of the contents, but not the truth or  
13 veracity of the following documents: Proof of Claim 13-1,  
14 Objection to claim number 13 and 14, at 270, Objection to  
15 claim 13 and 14, at 284, Proof of Claim 14-1. I also want  
16 to ask the court to take judicial notice of the second  
17 amended original petition in Adversary Case Number 2024-  
18 2716. This is our Exhibit Number 6, which would be at --

19 MR. BAKER: 499-6 on the docket.

20 MR. BURKS: 499-6 on the docket, Your Honor. I'd  
21 ask the court to take judicial notice of the amended -- the  
22 amended complaint for equitable subordination and damages  
23 filed by 2425 WL. It's our Exhibit Number 7. And it's at  
24 Docket Number 499-7. I'd ask the court to take judicial  
25 notice of the amended petition in Adversary 2023-2274 which

1 is at ECF Docket Number 499- --

2 MR. BAKER: Eight.

3 MR. BURKS: -- 8. I'd ask the court to take  
4 judicial notice of the motion for entry in order authorizing  
5 creditor to pursue estate claims, specifically a lender  
6 liability claim, which is at our Exhibit Number 9, ECF  
7 499 --

8 MR. BAKER: It should be nine.

9 MR. BURKS: Is it nine?

10 MR. BAKER: Let me check. It is.

11 MR. BURKS: 499-9, correct, Mr. Baker?

12 I'd ask the court to take judicial notice of the  
13 petition in Adversary Number 23-60036. That's at ECF number  
14 our Exhibit 10. 499-10. That leaves me only two more  
15 exhibits that I want to try and get in, Your Honor, and I  
16 appreciate -- with humility and a bit of embarrassment, I  
17 appreciate your patience in offering these for you to take  
18 judicial notice. So taken or not, Your Honor?  
19 (indiscernible). I'm actually waiting on you, Your Honor.  
20 Have you taken judicial notice of these?

21 THE COURT: Oh, I thought you had more, that you  
22 had more to go?

23 MR. BURKS: I have two more to go, but I don't  
24 think counsel's going to want me to offer them. Actually,  
25 why don't we give it a whirl.

1           THE COURT: Let's just do this. I'm going to take  
2   judicial notice of the pleadings that are on file, but not  
3   the facts that are in them. Proof of Claims 13-1 and 14-1  
4   and all objections thereto that are reflected on the claims  
5   register as well as ECF 499-6, 499-7, 499-8, 499-9 and 499-  
6   10. All right. Those I've taken judicial notice of, and  
7   you can move to your next two that you think are going to be  
8   disputed.

9           MR. BURKS: The next two are June 11 -- the  
10   Exhibits 11 and 20 -- or 10 and 11 -- 11. Exhibit 11.

11           Mr. Baker, will you put that up for the  
12   (indiscernible) on the screen.

13           THE COURT: So are you asking me to take judicial  
14   notice of 499-11?

15           MR. BURKS: Well, I'd like to offer it for limited  
16   purposes and see if it draws an objection. If it doesn't  
17   draw an objection, I won't need -- I may not need an entire  
18   witness, Your Honor. If it draws an objection, I'll need  
19   the witness.

20           THE COURT: Okay. Go ahead.

21           MR. BURKS: I offer into evidence Exhibit Number  
22   11.

23           Mr. Baker, will you put that on the screen,  
24   please.

25           Your Honor, what I'm intending to do, if I can



1 find it, if I can find it, what I intend to do is offer into  
2 evidence a letter, which, not for the purpose of whether or  
3 not there's an offer --

4 THE COURT: I need to see it.

5 MR. BURKS: Yeah, you do. May I have a four-  
6 minute recess, Judge?

7 THE COURT: I'll just sit here. Let's just do  
8 this quickly.

9 MR. BURKS: Yes, Your Honor.

10 THE COURT: Thank you.

11 MR. FITZMAURICE: Your Honor, while they're doing  
12 that, and we don't object to the request for judicial notice  
13 of those exhibits, not for their contents, not for the  
14 truth.

15 THE COURT: They're just --

16 MR. FITZMAURICE: As a matter of sort of fairness  
17 and completeness, can we similarly ask you to take judicial  
18 notice of the document at exhibit -- sorry, at ECF Number  
19 430, which is the bank's response to the amended claim  
20 objection.

21 THE COURT: Let's just do this. For completeness  
22 purposes as well as fairness, any sort of response to any of  
23 the pleadings that I just took judicial notice of, I also  
24 will take judicial notice of.

25 MR. FITZMAURICE: For purposes of the -- I

1 apologize, Your Honor, for pushing my luck here. But for  
2 purposes of the record, that would also include the bank's  
3 motion to dismiss the amended complaint for (indiscernible)  
4 subordination filed by 2425 WL.

5 THE COURT: Any sort of response will be  
6 (indiscernible) --

7 MR. FITZMAURICE: Thank you very much, Your Honor.

8 MR. BURKS: Nobody asked me. They didn't have to,  
9 but I had no objection to that.

10 THE COURT: Doesn't make any difference. You  
11 could have objected all you wanted. I'd have overruled you.  
12 Go ahead.

13 MR. BURKS: I thought you might. Judge, we filed  
14 a supplemental exhibit list at 95 with three documents.  
15 Will somebody please put it up on the screen.

16 MR. SATHER: 517-3.

17 MR. BURKS: 517-3. While I'm waiting for that, I  
18 confess that I've never seen this fancy seal on the screen,  
19 Judge.

20 THE COURT: Apparently you're not connected or you  
21 would be showing up because you're -- the right cable is  
22 connected to the screen. Whoever thinks they're connected,  
23 they're not. That's the reason you're seeing the seal.

24 MR. BURKS: That's what I was thinking. Yeah.  
25 (indiscernible) so it's Exhibits 93, 94, 95. Your Honor,

1     this is Exhibit 93. I offer not for --

2             THE COURT: Again, not by exhibit number, by ECF  
3     number, because everything's electronic. What ECF number is  
4     it? I can see it, but you need to put it on the record.  
5     It's right in front of you, Mr. Burks.

6             MR. BURKS: Your Honor, at this time I offer into  
7     evidence Document Number 517-3 for the sole purpose of  
8     whether the debtor or any related entity, or Mr. Choudhri or  
9     any related enemy has tendered \$700,000 to the trustee for  
10    the purpose of buying the NBK note. I am not offering it to  
11    argue that they have the right to do so or that they don't  
12    have the right to do so, or that the trustee had a duty or  
13    did not have a duty to accept it. I'm not offering it in  
14    any way to say that that prejudices any rights of NBK. I am  
15    offering it to establish the scope of the dispute. And then  
16    in regards to the dispute, A, these documents were submitted  
17    to the Chapter 11 trustee.

18            THE COURT: So let me just cut to the chase. You  
19    want to have me admit it for the limited purpose of the  
20    funds were tendered?

21            MR. BURKS: The emails with the copy of that check  
22    were submitted. Yes.

23            THE COURT: All right. So let me hear if there  
24    are any objections.

25            MR. FITZMAURICE: There are, Your Honor.

1           THE COURT: That's fine. Then we need a witness.  
2 I mean, I can't do it by stipulation. Call your next  
3 witness.

4           MR. BURKS: I tried. At this point -- at this  
5 point, Judge, I call -- I'm mindful of your previous rulings  
6 on objections regarding relevancy. May I have 60 seconds?  
7 That's all I --

8           THE COURT: Sure.

9           MR. BURKS: Your Honor, at this time, I call Mr.  
10 Jerry Alexander.

11          THE COURT: Mr. Alexander, you want to come  
12 forward, please?

13          MR. ALEXANDER: Yes, sir.

14          THE COURT: If you'll step to the microphone.

15          Mr. Burks, if you'll step aside so I can swear him  
16 in. Then you can step back. Thank you.

17          Mr. Alexander, please raise your right hand to be  
18 sworn. Do you swear or affirm to tell the truth, the whole  
19 truth and nothing but the truth, so help you God?

20          MR. ALEXANDER: I do.

21          THE COURT: All right. Please be seated, sir.

22          MR. FITZMAURICE: Your Honor, we object to the  
23 calling of the witness. We don't think he has any relevant  
24 testimony to offer. Our best guess is he's going to be --  
25 he's testifying about his view as to the merits of certain

1     claims.  That's not relevant to whether or not the bank  
2     should be allowed to credit bid tomorrow.

3             THE COURT:  All right.  Thank you.

4             I'll let you begin your testimony, and then if he  
5     wants to make an objection, go ahead.

6             MR. BURKS:  Thank you, Your Honor.

7             DIRECT EXAMINATION OF JERRY ALEXANDER

8     BY MR. BURKS:

9     Q     Sir, will you please state your name for the record?

10    A     My name is Jerry Alexander.

11    Q     And what do you do for a living?

12    A     I'm an attorney.

13    Q     What kind of law do you practice?

14    A     I practice business litigation.

15    Q     What type of business litigation?  All types or --

16    A     All types.  For the last 10 or 15 years, I've had a lot  
17    of cases where I represented trustees in bankruptcy.

18    Q     All right.  Mr. Alexander, have you ever looked at or  
19    examined a lender liability cause of action?

20    A     Yes.

21    Q     In this particular case, are you aware of any dispute  
22    or alleged lender liability cause of action?

23    A     Yes.

24             MR. FITZMAURICE:  Objection, relevance, Your  
25    Honor.

1 THE COURT: I'll overrule the objection.

2 BY MR. BURKS:

3 Q And in this case, have you examined facts or evidence  
4 or allegations on any party for a lender liability cause of  
5 action against NBK?

6 MR. FITZMAURICE: Objection, Your Honor.

7 THE WITNESS: Yes.

8 THE COURT: Okay. Hold on.

9 THE WITNESS: Excuse me.

10 THE COURT: You're a lawyer. You know when he  
11 objects, you need to stop.

12 Go ahead.

13 MR. FITZMAURICE: Objection on relevance grounds.  
14 Also on compound grounds. And also I think that the debtor  
15 is going to need to explain what facts it is that he  
16 supposedly reviewed to form -- again, there's a generic  
17 objection to this entire (indiscernible) --

18 THE COURT: Mr. Burks, lay a better predicate.

19 MR. BURKS: I'm going slowly, and --

20 THE COURT: Okay. Then go slower. Thank you.

21 MR. BURKS: Yes, Your Honor.

22 BY MR. BURKS:

23 Q In this case, have you looked at facts regarding  
24 allegations of (indiscernible)?

25 A Yes.

1 Q What facts have you looked at?

2 A I reviewed emails. I reviewed documents. I spoke to  
3 people, and I reviewed the lawsuit that led to the  
4 settlement agreement. I reviewed the settlement agreement  
5 and I reviewed email traffic and I talked to Mr. Choudhri,  
6 of course, and I talked to Mr. Wetwiska and I talked to  
7 other people that worked with Mr. Choudhri at various  
8 periods of time.

9 Q And when you say you looked at the settlement  
10 agreement, are you referring to the settlement agreement  
11 that was mentioned by counsel for NBK in his opening  
12 statement?

13 A Yes, sir.

14 Q What settlement agreement was that?

15 A The settlement agreement, there was a lawsuit filed by  
16 Mr. Wetwiska, and they settled that lawsuit. And the way  
17 they settled that lawsuit was they said that they could buy  
18 the note or the property for a certain amount of money.

19 Q And did it also provide for any releases or any  
20 consideration towards NBK? I mean, let's be fair. If  
21 you're going to describe part of it --

22 A I'm sorry? What --

23 Q What else did the settlement agreement have in it?

24 A The usual settlement agreement things. There are  
25 releases and things like that.

1 Q Okay, and in your review of the settlement agreement,  
2 in your conversations, who else did you talk to other than  
3 Mr. Choudhri?

4 A I talked to Mr. Wetwiska. I talked to people that  
5 worked for Mr. Choudhri. I talked to Azeemeh Zaheer. I  
6 talked to people that worked for Mr. Choudhri during the --  
7 during the time that no longer worked for him. And a couple  
8 of those I talked to under oath in a lawsuit, in a  
9 proceeding.

10 Q And did you determine that, at least from Mr. Choudhri  
11 or Mr. Choudhri's entities' perspective, that there was a  
12 lender liability dispute? I'm not asking you to comment on  
13 it, good or bad, but is there a dispute?

14 A Yes, sir.

15 Q Did you talk to anyone else about your opinions on the  
16 dispute?

17 A Yes sir.

18 Q Who?

19 A I talked to lawyers in my law firm about whether or not  
20 they thought it was a good case. I talked to other lawyers  
21 that are bankruptcy lawyers about whether or not they  
22 thought it would be a good case, those kinds of people.

23 Q And in fact how much time have you spent evaluating, to  
24 your satisfaction or in your opinion, this case? How long  
25 have you spent evaluating?



1 A There was -- I was representing -- I was representing  
2 Mr. Choudhri and some of his entities --

3 Q I'm going to re-ask the question.

4 A Okay.

5 Q How long have you spent evaluating it, sir?

6 A Evaluating this case specifically, over 100 hours.

7 Q So I'm going to ask it again because I'm not being  
8 clear, and I apologize. How much time have you spent  
9 examining the lender liability dispute that we've  
10 identified, at least Mr. Choudhri or his companies  
11 (indiscernible) --

12 MR. FITZMAURICE: Objection, Your Honor. What's  
13 the relevance to how much time Mr. Alexander has spent?

14 THE COURT: I'll overrule the objection.

15 Go ahead, Mr. Burks.

16 THE WITNESS: I would have spent over 100 hours  
17 doing that.

18 BY MR. BURKS:

19 Q All right. Did you talk to the Chapter 7 trustee about  
20 it? Excuse me. I'll retract and ask again.

21 Did you form an opinion as to the validity of the  
22 dispute?

23 A Yes.

24 Q All right. Have you offered to anybody to represent  
25 plaintiffs in this dispute against NBK?

1 A I offered --

2 Q Yes or no, sir.

3 A Yes. I'm confused by the word plaintiff's counsel. I  
4 don't --

5 Q Well, any plaintiffs in the lawsuit are whoever they  
6 are.

7 A Yes, I have.

8 Q And did you state whether you would -- the terms on  
9 which you would handle the action?

10 A Yes.

11 MR. FITZMAURICE: Objection, Your Honor.

12 MR. BURKS: I'll --

13 MR. FITZMAURICE: If there's a document that  
14 establishes all of this, that would be helpful for us to  
15 look at. And again, I'm struggling with the relevance of  
16 Mr. Alexander's views as to -- as counsel for the debtor,  
17 who he's acknowledged he represents Mr. Choudhuri, what his  
18 views of the dispute between the parties -- what relevance  
19 that has as to whether or not the bank should be allowed to  
20 credit bid.

21 THE COURT: I'll overrule the objection except as  
22 to the document.

23 Mr. Burks, if there is a document that evidences  
24 that he mentioned, then I'd like to see that. Go ahead.

25 BY MR. BURKS:

1 Q Is there a document in writing which you made anybody  
2 an offer to represent any plaintiff in a lender liability  
3 complaint versus National Bank of Kuwait?

4 A I believe I wrote a letter to the counsel for the  
5 trustee that said I would take it on a contingent fee basis.  
6 But I don't think I talked about percents or anything else.  
7 I decided I would be willing to do it on a contingent fee  
8 basis at no cost to the estate.

9 MR. BURKS: All right (indiscernible) find that  
10 document.

11 MR. BAKER: It should be 499-83.

12 MR. BURKS: Your Honor, we're about to put up on  
13 the screen Docket Number 499 -- what?

14 MR. BAKER: Eighty-three.

15 MR. BURKS: Dash 83, and I'm looking at that  
16 shield again. Still looking at the shield. Can we go to  
17 the bottom of it, please, so we can -- just slowly scroll so  
18 we can identify what this is. Scroll down so we can see who  
19 signed it, please, and then I want to go back up to the top,  
20 Mr. Baker.

21 MR. BAKER: Go up to the top?

22 MR. BURKS: Well yeah (indiscernible) sending the  
23 letter.

24 BY MR. BURKS:

25 Q Mr. Alexander, are you looking at this document?

1 A Excuse me?

2 Q Are you looking at this document?

3 A Yes. It's a letter dated April 3, 2024 from me to R.J.  
4 Shannon, Esquire and Kyung S. Lee, Esquire.

5 Q A moment ago, we went to the last page where there was  
6 a signature. Did you see that?

7 A Briefly.

8 Q Is that your signature?

9 A I'm sure it is.

10 Q Is this your letter?

11 A Yes.

12 Q All right. Are these the conditions and the  
13 opinions -- I'll start again.

14 Are these the opinions -- do these reflect the opinions  
15 you have regarding this lawsuit or this cause of action?

16 A Some of them. It has -- it says herein (indiscernible)  
17 pertinent facts and references to exhibits. There are --  
18 there are others I keep. I keep finding things out or  
19 hearing things.

20 MR. FITZMAURICE: Objection, Your Honor, lacks  
21 foundation as to things he keeps finding out and hearing.

22 THE COURT: I'll sustain the objection. Thank  
23 you.

24 BY MR. BURKS:

25 Q Is this the letter you sent to the Chapter 11 trustee?

1       A       Yes.

2               MR. BURKS: All right. Your Honor, I offer it  
3 into evidence, not for the veracity of the cause of action,  
4 but for the fact that Mr. Alexander has the opinion set  
5 forth in this letter regarding the dispute.

6               MR. FITZMAURICE: Your Honor, we'd object to the  
7 admission even for that limited purpose. Mr. Alexander's  
8 opinions as to the dispute are not relevant to whether or  
9 not there is in fact a bona fide dispute between the parties  
10 as identified in the motion --

11              THE COURT: Bear with me. I'm more worried about  
12 the fact that it shows there's 175 pages to that exhibit at  
13 the top of the ECF.

14              MR. FITZMAURICE: And we've looked at two of them.

15              MR. BURKS: I'm just offering Pages 2, 3 and 4.  
16 Just the letter itself, Your Honor. I'm not worried about  
17 the exhibit. I'm trying to establish the scope of the  
18 dispute.

19              THE COURT: Well, bear with me one second. Two  
20 through six is what you are offering?

21              MR. BURKS: Yes, Judge.

22              THE COURT: Okay. So let me hear objections to  
23 Pages 2 through 6, if you have any, Mr. Fitzmaurice.

24              MR. FITZMAURICE: Your Honor, I just want to  
25 briefly look to make sure I understand what those pages are

1 really quickly. So it's the -- it's the same objections,  
2 Your Honor. Mr. Alexander's view as to the merits of any  
3 dispute between the parties.

4 THE COURT: I agree as to the merits. I don't  
5 think his opinion as to merits makes any difference to me.

6 MR. FITZMAURICE: And the -- and the --

7 THE COURT: But as far as the fact that he sent  
8 the letter, I'll admit 499-83, only Pages 2 through 6 for  
9 that limited purpose.

10 (Trial Exhibit 499-83.1-6 entered into evidence)

11 THE COURT: Mr. Burks, you may call your next  
12 witness.

13 MR. BURKS: Actually, at this point, I pass the  
14 witness.

15 THE COURT: All right. Thank you.

16 MR. BURKS: I'm not going to try -- I'm not going  
17 to try the lawsuit today.

18 THE COURT: Mr. Choudhri, do you have any  
19 questions of this witness? No? Is that a no?

20 MR. CHOUDHRI: No, Your Honor.

21 THE COURT: Thank you.

22 Mr. Fitzmaurice?

23 MR. FITZMAURICE: Briefly, Your Honor.

24 THE COURT: Go ahead. Do you want to project?

25 MR. FITZMAURICE: Oh, I'm sorry, Your Honor. Yes.

1 THE COURT: I have to switch every time we move.

2 CROSS-EXAMINATION OF JERRY ALEXANDER

3 BY MR. FITZMAURICE:

4 Q So Mr. Alexander, good afternoon, or good morning,  
5 rather. I'm showing you what -- the letter that you were  
6 just looking at here.

7 A Yes, sir.

8 Q Do you recognize that?

9 A Good morning to you. Thank you.

10 Q And I'm going to scroll down your bullet point list of  
11 items. I can go as fast or as slow as you want, but I'm  
12 going to scroll through them, and then I'm going to ask you  
13 a question. I'll tell you now what that question is going  
14 to be so you have it in your mind when you look. And it is,  
15 is it that all of these events occurred prior to August of  
16 2022. So the first bullet, that references events that  
17 occurred in January 2021; is that correct?

18 A That's correct. That would be before August 2022.

19 Q And then there's something at the end of that bullet  
20 point of July 29, 2021?

21 A That would be before August 2022.

22 Q And then the second bullet, August of 2021?

23 A Yes, sir.

24 Q And then this bullet here that's at the bottom of the  
25 page, it references an email that was sent in August of

1 2021. Do you see that?

2 A Yes, sir.

3 Q Do you see in this bullet here, there's a reference to  
4 events that occurred in September of 2019?

5 A Yes, sir.

6 Q In this bullet here, September of 2021. Do you see  
7 that?

8 A Yes.

9 Q And then July 2nd of 2022?

10 A July 2nd of 2022 is before August.

11 Q Okay, and then there's reference in this next bullet  
12 about August 22, 2022?

13 A Yes.

14 Q Do you see that?

15 A Yes.

16 Q Do you know if that's the date that the parties entered  
17 into the settlement agreement?

18 A That's the settlement agreement date. Yes, sir.

19 Q Okay, and was the settlement agreement one of the  
20 documents that you reviewed?

21 A I believe it was.

22 Q I have too many PDFs open (indiscernible) --

23 A It's fine.

24 Q So I'm referring to a document that's been filed at ECF  
25 Number 508-7. I'll scroll through it. I'll scroll through



1     it, Mr. Alexander. But my question is, do you recognize  
2     this to be the settlement agreement that you reviewed?

3     A     I believe it could be that, yes.

4     Q     Okay, and looking here at the first paragraph, the  
5     parties to the settlement agreement are the National Bank of  
6     Kuwait, New York Branch. Do you see that?

7     A     Yes.

8     Q     And debtor, Galleria Owner?

9     A     Yes.

10    Q     Do you know who Naissance Galleria is?

11    A     Yes.

12    Q     Who's that?

13    A     Naissance Galleria is a company that was a mezzanine  
14    lender to Galleria 2425 Owner, LLC.

15    Q     Well, they were the mezzanine lender to the debtor's  
16    owner, correct?

17    A     Yes. Yes.

18    Q     And then the last party to the settlement agreement is  
19    Mr. Choudhri, individually?

20    A     Yes, sir.

21    Q     When you reviewed the settlement agreement, did you  
22    agree -- sorry. Did you review the terms of the agreement  
23    between the parties?

24    A     Yes, I found it very interesting.

25    Q     And as part of your review, did you review Section

1     3.1(a), where the debtor and Mr. Choudhri acknowledged the  
2     indebtedness that they owed to the bank?

3     A     I did see that.

4     Q     Okay, and did you see that they acknowledged that that  
5     debt was owed without defense, setoff, claim, counterclaim  
6     or deduction of any nature whatsoever, all of which were  
7     expressly waived?

8     A     Yes, sir. That's fairly typical language.

9     Q     Okay. But you acknowledge that that's what, in fact,  
10    the debtor and Mr. Choudhri did in this agreement?

11    A     I agree that that's what the words in the agreement  
12    say.

13    Q     And in Section 3.1(b), the debtor and Mr. Choudhri  
14    acknowledged that there were existing defaults under the  
15    loan agreement?

16    A     That's what the agreement says.

17    Q     Right, and that there were no defenses, setoffs,  
18    counterclaims, et cetera to those defaults?

19    A     The agreement also says that.

20    Q     And the agreement also says that if -- that the bank  
21    had the right to foreclose?

22    A     It says that in (c). Yes.

23    Q     Yes. Thank you. Now, the settlement agreement allows  
24    the bank -- I'm sorry, allows Mr. Choudhri to make a payment  
25    to the bank of \$27 million; is that right?

1 A It does.

2 Q Okay, and that payment was never made, was it?

3 A I don't think it was, no.

4 Q Okay, and in Section (g), the settlement agreement  
5 calls for any active litigation to be -- against the bank to  
6 be dismissed with prejudice; is that right?

7 A Yes.

8 Q Section 4.1 of the settlement agreement contains  
9 releases of the bank --

10 A Yes, sir.

11 Q -- by Mr. Choudhri and the debtor and the mezzanine  
12 lender; is that right?

13 A Yes. Again, but I expected that language to be in the  
14 agreement.

15 Q And in fact it is there?

16 A It is there.

17 Q Okay. In Section 5.3, the debtor and Mr. Choudhri  
18 agreed that if they didn't pay the amounts that were due  
19 under the settlement agreement, that the bank had the right  
20 to foreclose. Isn't that right?

21 A Well, 5.3 says a lot of things. Whatever it says,  
22 that's what's in the agreement.

23 Q Was this part of your review that -- was it part of  
24 your review that the debtor agreed that if they didn't pay  
25 the amounts that were owed, the bank would foreclose?

1 A Yes sir, it was part of my review --

2 Q And did they --

3 A -- (indiscernible) expected release language, all the  
4 other things to be in (indiscernible) --

5 Q And it was also part of your review that the debtor and  
6 Mr. Choudhri covenanted that they will not interfere with  
7 the bank's ability to foreclose following a default under  
8 the settlement agreement, right?

9 A I don't see that.

10 Q Let me see if I can help you. Section 5.3.

11 A I see that.

12 Q The first sentence following the bold text, following  
13 any settlement default, each of Galleria, Choudhri and  
14 Naissance covenant and agree that they shall not seek to  
15 restrain or otherwise hinder, delay, frustrate or impair  
16 NBK's efforts to (i) foreclose. The text continues. But  
17 you can read that.

18 A It says that.

19 Q Okay, and that was all part of the review that you  
20 undertook?

21 A It absolutely was.

22 Q Okay.

23 A And like I said, I expected terms like that to be in  
24 this agreement.

25 Q All right, and you've previously represented Mr.

1 Choudhri in litigation against the bank, right?

2 A Either him or one of his entities. I'm not sure. But,  
3 yes. Yes, I have. Or maybe I haven't. I don't  
4 (indiscernible) --

5 Q So I'm going to direct your attention, Mr. Alexander,  
6 back to the letter.

7 A Yes, sir.

8 Q At 499-83.

9 A Yes.

10 Q Your second paragraph, I have previously represented  
11 Mr. Choudhri in dispute with the bank.

12 A Yes.

13 Q Okay.

14 A I think -- I think that's right. I was confused if it  
15 was him or one of his entities.

16 Q Thank you, Mr. Alexander. I apparently have one more  
17 question.

18 THE COURT: That's fine.

19 THE WITNESS: You can ask it.

20 BY MR. FITZMAURICE:

21 Q Mr. Alexander, I'm referring back to -- I'm referring  
22 back to the confidential settlement agreement which is at  
23 ECF 508-7, in particular directing your attention to Section  
24 9.8 of that agreement.

25 A Yes, sir.

1 Q Is this part of the review that you undertook?

2 A It is. But I was not the --

3 Q You were not the counsel who was involved?

4 A I was not.

5 Q But in fact, the debtor and Mr. Choudhri and the

6 mezzanine lender, they all had counsel? They all

7 acknowledged here that they had counsel?

8 A Yes, and I've spoken with them.

9 Q And that was Mr. Wetwiska from Akin Gump? That was --

10 A Mr. Wetwiska. Yes.

11 MR. FITZMAURICE: Nothing further, Judge. Thank

12 you.

13 THE COURT: All right. I believe --

14 MR. BURKS: Judge --

15 THE COURT: Yeah.

16 REDIRECT EXAMINATION OF JERRY ALEXANDER

17 BY MR. BURKS:

18 Q Mr. Alexander, while the door just got opened kind of  
19 wide. But I will not ask you to try this case today sitting  
20 on the stand. But I do have a few questions, sir. All  
21 right.

22 A Yes, sir.

23 Q So all the points that counsel just asked you, you  
24 considered them before issuing your letter which has been  
25 admitted into evidence on limited purposes, correct?

1 A Oh, absolutely. Absolutely. All of them. Every  
2 lender -- every lender has documents that say things like  
3 those.

4 Q Have you brought lender liability actions before?

5 A Yes.

6 MR. FITZMAURICE: Objection, relevance, Your  
7 Honor.

8 THE COURT: Go ahead. What's your response to  
9 that?

10 MR. BURKS: The relevance is that by reading -- by  
11 asking this witness at least 14 specific questions regarding  
12 this settlement agreement, I have now -- should have leeway  
13 to explain why he still thinks there's a cause of action.

14 THE COURT: I'll overrule the objection. Go  
15 ahead.

16 BY MR. BURKS:

17 Q Mr. Alexander, you've read these points. You've  
18 considered these points that were asked of you, correct?

19 A Yes.

20 Q So have you tried lender liability actions before?

21 A Yes, sir.

22 Q Have you succeeded?

23 MR. FITZMAURICE: Objective, relevance.

24 THE COURT: I'll overrule the objection.

25 BY MR. BURKS:

1 Q Have you succeeded?

2 A Yes, sir.

3 Q In those actions that you succeeded in, were there  
4 these types of releases and settlement agreements involved?

5 A There were agreements that were more onerous than this  
6 when it came to that.

7 Q All right, and you set forth in your letter your  
8 opinion as to why there is a good lender liability action  
9 against the National Bank of Kuwait, correct?

10 A Part of my -- part of my opinion.

11 Q All right.

12 A Part of it.

13 Q And some of the actions occurred after the settlement  
14 agreement, correct?

15 MR. FITZMAURICE: Objection.

16 THE WITNESS: Most of them. Most of them.

17 THE COURT: Hold on. There's been an objection.  
18 What's the objection?

19 MR. FITZMAURICE: There's nothing in the letter  
20 about anything that happened --

21 THE COURT: I'll sustain the objection.

22 BY MR. BURKS:

23 Q Based on --

24 THE WITNESS: I'm not sure that that's correct.

25 But --



1           MR. BURKS: He's -- the judge has sustained the  
2     objection, sir. We're both attorneys.

3           THE COURT: If you want to look at the letter  
4     again. I just sustained the objection as to the form of the  
5     question. I didn't see anything. If you want to bring the  
6     letter back up, feel free.

7           MR. BURKS: I didn't understand the scope of your  
8     ruling. I apologize, Judge, for putting words in your  
9     mouth. I apologize.

10          THE COURT: I apologize.

11          MR. BURKS: The witness cannot control the scroll,  
12     can he, Your Honor?

13          THE COURT: Can the witness scroll it down?

14          MR. BURKS: If you will state what you need to do  
15     to review, what pages, just tell us where you need to go.

16     BY MR. BURKS:

17     Q     And the question is, in your letter, are there any  
18     allegations or acts which occurred after the date of the  
19     settlement agreement.

20     A     There -- let me see. Hold it right here. Yes. If you  
21     look at the -- there's a --

22     Q     The answer is yes, and what are those, sir? Please  
23     identify them, in your letter though.

24     A     Well, the first -- the second bullet point on the page  
25     that I'm looking at, and I don't know what page it is

1 because I didn't see the top of it. Page 4, the second  
2 bullet point starts in with all of those events happened  
3 after August 22, 2022. Excuse me, third bullet point. NBK  
4 has prevented debtor's successful performance under any and  
5 all agreements it has with NBK, including the confidential  
6 settlement agreement.

7 Q What else?

8 A Confidential settlement agreement permitted a timeframe  
9 which the debtor could sell the 2425 building and debtor was  
10 successful in receiving a hard letter of intent dated  
11 January 17, 2023 to purchase the building from Caldwell  
12 Soames. A true and correct copy of that letter of intent is  
13 attached hereto as Exhibit 2.

14 Q What else after the settlement agreement?

15 A Again, these negotiations were ongoing. NBK took  
16 actions. They've interfered with the continuation and the  
17 closing of that transaction, including issuing a notice of  
18 foreclosure on March 29, 2023, in breach of the confidential  
19 settlement agreement, which debtor believes was done  
20 intentionally to prevent the sale.

21 Q Anything else?

22 A The sale would have cleared the Bank of Kuwait debt as  
23 it stood and at the time and left great value to the other  
24 plaintiffs. The debtor believes the Bank of Kuwait  
25 recognized that greater value and wanted to take it for

1     itself by foreclosure in a loan-to-own gambit.

2     Additionally, NBK posted for foreclosure in 2023 early and  
3     against the extended grace period that the state court had  
4     given to debtor, which chilled the bidding process and the  
5     interest in the 2425 building completely. Debtor believes  
6     that NBK knew this would prevent the sale and did it on  
7     purpose to prevent the debtor from successfully selling the  
8     property and paying off the loan so NBK could foreclose and  
9     become the owner of the building. The debtor also made the  
10    following substantial payments the NBK's consideration to  
11    allow it a fair opportunity to sell the building.

12    \$801,509.42, August 27, 2022; \$80,000 paid by the debtor to  
13    NBK on April 18, 2023; \$80,000 paid by the debtor to NBK on  
14    May 10, 2023.

15    Q     Sir, let me interrupt you. Based on these things that  
16    you believe, in your opinion, occurred after the settlement  
17    agreement was executed, you then list various causes of  
18    action that you believe exist; is that correct?

19    A     Yes, sir.

20           MR. FITZMAURICE: So Your Honor, object to this  
21    testimony, at least in part, on hearsay grounds. The claim  
22    is that the bank somehow interfered with an agreement that  
23    the debtor had with Paul Caldwell and Caldwell Soames. He's  
24    on their list. They could call him and talk to him about  
25    whether or not any of that is true. But instead they're

1 offering this hearsay testimony from a witness who has no  
2 actual firsthand knowledge of any of those facts to try to  
3 prove, despite the fact of what they've said earlier about  
4 the limited purpose for which this is offered, they're  
5 actually trying -- offering this testimony and this evidence  
6 to try to establish to Your Honor that all of these things  
7 are in fact true.

8 MR. BURKS: Response?

9 THE COURT: Here's my ruling. Okay. It was  
10 admitted for a limited purpose. His knowledge or lack of  
11 knowledge or what he specified to you goes to weight. I've  
12 heard it. Whether it's true or not is a totally different  
13 issue. So --

14 MR. BURKS: We're not trying the case today.

15 THE COURT: So go ahead. I'll overrule that  
16 objection.

17 BY MR. BURKS:

18 Q So why would you take a case like this,  
19 (indiscernible), why would you take this on a contingency  
20 basis?

21 A Because I can win it. And it's not a complex case.  
22 You want to see a complex case? Look at the Bailey Tool  
23 case.

24 Q For what case?

25 A The Bailey Tool case. Bailey Tool v. RBC.

1 Q I'm going to cut you off on that because I don't know  
2 why that's relevant. But I understand you're saying for you  
3 it's not complex.

4 A It's not. It's not complex and these documents are not  
5 difficult.

6 Q You have a damage model for this?

7 A Yes.

8 Q What is it?

9 A Well --

10 MR. FITZMAURICE: Objection, Your Honor. Do we  
11 have -- can we look at the damage model?

12 THE COURT: I sustain the objection.

13 BY MR. BURKS:

14 Q Do you have a damage model in this letter?

15 A I don't know. I don't think so.

16 MR. BURKS: All right. Nothing further, Judge.

17 THE COURT: Thank you.

18 Mr. Choudhri?

19 REDIRECT EXAMINATION OF JERRY ALEXANDER

20 BY MR. CHOUDHURI:

21 Q Mr. Alexander, you agreed to take this case on a  
22 contingency where it would cost the estate no money,  
23 correct?

24 MR. FITZMAURICE: Objection, asked and answered.

25 THE COURT: I'll sustain the objection.

1           You can't be repetitive, Mr. Choudhri. Ask  
2 something that hasn't been asked already.

3 BY MR. CHOUDHURI:

4 Q I just want to make sure I understand. You did speak  
5 to the Chapter 11 trustee or their counsel?

6 MR. FITZMAURICE: Objection, Your Honor, asked and  
7 answered.

8 THE COURT: I'll sustain the objection.

9 Don't be repetitive, Mr. Choudhri. If it's  
10 already been asked and answered, I've already heard it. You  
11 don't need to go over it again.

12 BY MR. CHOUDHURI:

13 Q In the settlement agreement, Mr. Alexander, there's  
14 mutual promises that go both ways, right?

15 A Yes, sir.

16 Q So do you have an understanding, as a follow-up to Mr.  
17 Fitzmaurice's questions, of how the settlement agreement  
18 came to be?

19 MR. FITZMAURICE: Objection, Your Honor,  
20 relevance.

21 THE COURT: I'll sustain the objection.

22 BY MR. CHOUDHURI:

23 Q Are you aware in the settlement agreement that the bank  
24 had an obligation to provide a loan sale agreement?

25 MR. FITZMAURICE: Objection, Your Honor. The

1       agreement speaks for itself. We can look at it.

2               THE COURT: I'll sustain the objection.

3       BY MR. CHOUDHURI:

4       Q       What was your experience in the Bailey Tool case, Mr.  
5       Alexander?

6               MR. FITZMAURICE: Objection, Your Honor,  
7       relevance.

8               THE COURT: I'll sustain the objection. Thank  
9       you.

10      BY MR. CHOUDHURI:

11      Q       Did the bank frustrate performance by the debtor and/or  
12      me individually?

13              MR. FITZMAURICE: So objection, Your Honor, calls  
14      for speculation and calls for a legal conclusion and assumes  
15      facts not in evidence.

16              THE COURT: I'll sustain the objection. Thank  
17      you.

18      BY MR. CHOUDHURI:

19      Q       Mr. Fitzmaurice read some provisions of the settlement  
20      agreement. There are other provisions of obligations by the  
21      bank as well in that same settlement agreement, correct?

22              MR. FITZMAURICE: Objection, Your Honor. We  
23      can -- best evidence. We can look at the agreement to see  
24      what its terms are.

25              THE COURT: The exhibit speaks for itself.

1 MR. CHOUDHURI: And that's in, Your Honor?

2 THE COURT: I don't think anyone has actually  
3 offered it as of yet, but I'm happy to admit it if the  
4 parties will agree to it.

5 MR. FITZMAURICE: We agree.

6 THE COURT: All right. Then 508-7, the settlement  
7 agreement, is admitted.

8 (Trial Exhibit 508-7 entered into evidence)

9 THE COURT: Thank you.

10 BY MR. CHOUDHURI:

11 Q Do you believe that the National Bank of Kuwait has  
12 committed a tort?

13 MR. FITZMAURICE: Objection, Your Honor.

14 THE COURT: Basis of the objection?

15 MR. FITZMAURICE: Mr. Alexander's expert opinion  
16 about whether or not the bank has committed a tort is not  
17 relevant. It calls for a legal conclusion, and those are  
18 for Your Honor.

19 THE COURT: I'll sustain the objection.

20 BY MR. CHOUDHURI:

21 Q You've reviewed the documents in the case, correct?

22 A Yes, sir.

23 Q In the documents you reviewed in the case, have you  
24 seen offers and leases and correspondence that was submitted  
25 to the National Bank of Kuwait?



1           MR. FITZMAURICE: So objection, Your Honor, vague  
2 as to the case, which case we're talking about, but also  
3 that the documents would be the best evidence of --

4           THE COURT: I'll sustain the objection.

5           You want to project, Mr. Choudhri?

6           MR. CHOUDHURI: Yes. Can I put up the letter?

7           THE COURT: I just need to know where you're going  
8 to connect from and I'll put it up. Where do you want it,  
9 where do you want to project from and who's going to  
10 project?

11           Mr. Choudhri, you can connect right there and do  
12 it yourself if you'd like. Mr. Choudhri, he can stand there  
13 and assist you. That's fine, too.

14           MR. CHOUDHURI: Thank you.

15           MR. FITZMAURICE: Your Honor, just for purposes of  
16 the record, can we just have a representation as to who that  
17 is?

18           THE COURT: Sure. What's your name, sir?

19           MR. PALAVAN: Shea Palavan.

20           THE COURT: One more time?

21           MR. PALAVAN: Shea Palavan.

22           THE COURT: Shea Palavan? Is that correct? Did I  
23 say that correctly?

24           MR. PALAVAN: Yes, Your Honor.

25           MR. FITZMAURICE: And in what capacity is Mr.

1 Palavan?

2 MR. CHOUDHURI: He's assisting me.

3 MR. FITZMAURICE: Is he a lawyer or a business  
4 person or something else?

5 MR. CHOUDHURI: Well, he is a lawyer. But he's  
6 assisting me --

7 MR. FITZMAURICE: Well, If Mr. Choudhri is  
8 represented by counsel --

9 THE COURT: All he's doing is helping project  
10 because of his difficulties with the stroke. I don't have  
11 any problem with that. That's fine. Go ahead.

12 MR. FITZMAURICE: Thank you, Your Honor.

13 THE COURT: Thank you.

14 MR. CHOUDHURI: I just want to clarify, Your  
15 Honor. I'm able to have an assistant to help me?

16 THE COURT: I said he's more than happy to --

17 MR. CHOUDHURI: Okay. Okay. Thank you, Your  
18 Honor. I just wanted to know if I understood.

19 THE COURT: Yeah.

20 BY MR. CHOUDHURI:

21 Q Mr. Alexander, you've been to the building, 2425?

22 A Yes, sir.

23 Q Can you describe the building?

24 MR. FITZMAURICE: Objection, relevance, Your  
25 Honor.

1 THE COURT: It's not relevant, Mr. Choudhri.

2 BY MR. CHOUDHURI:

3 Q All right. You've reviewed the contract that Mr.  
4 Caldwell and the debtor signed?

5 MR. FITZMAURICE: Objection, Your Honor.

6 THE COURT: Best evidence, if you have a contract,  
7 we need to look at the contract. He can't testify what's in  
8 it.

9 BY MR. CHOUDHURI:

10 Q I'd point you to the document on your screen, Mr.  
11 Caldwell --

12 MR. FITZMAURICE: Your Honor, we object to the use  
13 of the exhibit. The purpose is to say that this is an  
14 agreement by Mr. Caldwell. It's not a letter from him.  
15 There is no signature. There is no DocuSign. There's a  
16 computer-generated name in script. There's no way for  
17 anyone to know whether he in fact put that on there. So the  
18 document is not authenticated, and it lacks foundation.

19 THE COURT: I'll sustain the objection on lack of  
20 authentication.

21 BY MR. CHOUDHURI:

22 Q Did you receive this letter?

23 THE COURT: You can't ask questions about it. I  
24 sustained the objection based on lack of authentication.

25 BY MR. CHOUDHURI:

1 Q Have you seen the contract for \$85 million that was  
2 attached to your letter?

3 MR. FITZMAURICE: Your Honor, I would just object  
4 to the use of the word contract.

5 THE COURT: I'll sustain the objection as to the  
6 form of the question. Ask another question.

7 BY MR. CHOUDHURI:

8 Q Do you see what's on your screen, Mr. Alexander?

9 A Yes.

10 Q What does the heading say?

11 MR. FITZMAURICE: Objection, Your Honor, the  
12 document speaks for itself.

13 THE COURT: It's not in evidence, but I'll sustain  
14 the objection.

15 BY MR. CHOUDHURI:

16 Q Mr. Alexander, this is a letter. Is this an email that  
17 you authored to R.J. Shannon and Kyung Lee on April the 3rd?

18 A Yes, sir.

19 Q And does this have an attachment? Is this the complete  
20 email and attachment that goes with it?

21 A I think so.

22 MR. CHOUDHURI: I'd like to move to make this  
23 document, 499-83, Your Honor.

24 THE COURT: Objections?

25 MR. FITZMAURICE: Yes, Your Honor. Mr. Choudhri,

1     separate and apart from his counsel, or the counsel for one  
2     of his entities, is offering it for the proof, the truth of  
3     all of the matters asserted. Your Honor already admitted  
4     the letter for a limited purpose, and this is now an attempt  
5     to introduce all of it for its truth and we would object to  
6     that.

7                 THE COURT: I'll sustain the objection.

8     BY MR. CHOUDHURI:

9     Q     Mr. Alexander, do you believe that the Bank of Kuwait  
10    properly posted for foreclosure of the property?

11                MR. FITZMAURICE: Objection, Your Honor,  
12    relevance. It lacks foundation. It assumes facts not in  
13    evidence.

14                THE COURT: I'll sustain the objection.

15    BY MR. CHOUDHURI:

16    Q     Do you have an opinion of what the value of this case  
17    is worth?

18                MR. FITZMAURICE: Objection, vague as to this  
19    case.

20                THE COURT: I'll sustain the objection. Rephrase  
21    the question.

22    BY MR. CHOUDHURI:

23    Q     Do you have an opinion on what the value of the claims  
24    against the national bank are?

25                MR. FITZMAURICE: Your Honor, it's offering --

1 seeking to have Mr. Alexander offer an opinion as to the  
2 ultimate issue. And again, those are for Your Honor to  
3 decide or for another court to decide and not for Mr.  
4 Alexander.

5 THE COURT: I'll sustain the objection.

6 BY MR. CHOUDHURI:

7 Q In your investigation, did you come to learn that there  
8 was an offer to buy 2425 (indiscernible) 55 percent of it,  
9 for \$75 million?

10 MR. FITZMAURICE: So objection, Your Honor, both  
11 to the use of the term investigation. That assumes facts  
12 that are not of evidence. And Mr. Choudhri is just trying  
13 to end run Your Honor's previous ruling about the  
14 admissibility of the factual contents of the letter and its  
15 exhibits.

16 THE COURT: I'll sustain the objection. Thank  
17 you.

18 BY MR. CHOUDHURI:

19 Q If you were to take this case on, on a contingency,  
20 would it cost the estate any money?

21 MR. FITZMAURICE: Objection, asked and answered.

22 THE COURT: I'll sustain the objection.

23 BY MR. CHOUDHURI:

24 Q Mr. Alexander, do you believe the debtor -- the NBK has  
25 interfered with the debtor's efforts to pay NBK off --

1 MR. FITZMAURICE: Same objection --

2 BY MR. CHOUDHURI:

3 Q -- and perform under the settlement agreement?

4 THE COURT: I'll sustain the objection.

5 MR. FITZMAURICE: Your Honor, also --

6 THE COURT: This witness doesn't have any personal  
7 knowledge of any of these facts, Mr. Choudhri. Okay. He's  
8 evaluated them. I'm aware of that. Okay. But he doesn't  
9 have personal knowledge. He can't tell me that any of these  
10 things actually occurred. Okay. So move along. Again, I'm  
11 going to give you a couple more questions and then I'm going  
12 to cut you off.

13 MR. CHOUDHURI: I'm almost done, Your Honor.

14 Thank you.

15 BY MR. CHOUDHURI:

16 Q Mr. Alexander, do you believe there's any questions I  
17 haven't asked you that --

18 THE COURT: He can't give a narrative, Mr.  
19 Choudhri. That's not the way it works.

20 MR. CHOUDHURI: Okay. All right. No more  
21 questions then. Thank you.

22 THE COURT: Thank you. All right. I'll go back  
23 to Mr. Fitzmaurice.

24 MR. FITZMAURICE: Nothing further, Your Honor.

25 THE COURT: Thank you.

1           Mr. Burks?

2           MR. BURKS: How long has it been since you've had  
3 to tell somebody to ask questions and not to give a  
4 narrative?

5           THE COURT: Go ahead, please ask your questions.

6           MR. BURKS: At this point, Your Honor, on behalf  
7 of 2425 WL, we call --

8           THE COURT: Are you -- do you pass on this  
9 witness? I asked you if you had any questions for this  
10 witness.

11          MR. BURKS: None.

12          THE COURT: Okay. So you are excused, sir. Thank  
13 you for coming.

14          MR. ALEXANDER: Thank you, Your Honor.

15          THE COURT: All right. You're going to call who,  
16 Mr. Burks?

17          MR. BURKS: Now my turn to call another witness?

18          THE COURT: Yes.

19          MR. BURKS: Your Honor, Mr. Jeff Alexander is  
20 being called now on behalf of 2425 (indiscernible) --

21          THE COURT: Mr. Alexander, will you come forward,  
22 wherever you are?

23          MR. SATHER: Steidley.

24          MR. BAKER: Steidley.

25          MR. STEIDLEY: I think he means Jeff Steidley,



1 Judge.

2 THE COURT: Okay.

3 MR. BURKS: Let me try again. On behalf of 2425  
4 WL, we call Mr. Jeff Steidley.

5 THE COURT: All right, sir, will you please state  
6 your name for the record.

7 MR. STEIDLEY: Jeff Steidley, Judge.

8 THE COURT: All right. Please raise your right  
9 hand to be sworn. Do you swear or affirm to tell the truth,  
10 the whole truth and nothing but the truth, so help you God?

11 MR. STEIDLEY: I do.

12 THE COURT: All right. Please be seated. Thank  
13 you.

14 MR. FITZMAURICE: Your Honor, again, just for the  
15 record, we object to Mr. Steidley being called. He's  
16 counsel for 2425 WL. It's not clear what possible relevant  
17 evidence he could have to whether or not the bank's entitled  
18 to credit bid tomorrow.

19 THE COURT: Please object to anything that he's  
20 asked and I'll rule on the record. Thank you.

21 Mr. Burks, go ahead.

22 DIRECT EXAMINATION OF JEFF STEIDLEY

23 BY MR. BURKS:

24 Q Can you please state your name for the record, sir?

25 A My name is Jeff Steidley.

1 Q And what do you do for a living?

2 A I am an attorney.

3 Q And in connection with this bankruptcy case, have you  
4 filed any pleadings?

5 A I filed a motion to remand on a case that I filed in  
6 state court.

7 Q So is your answer that you filed a state court  
8 petition?

9 A I filed a state court --

10 MR. FITZMAURICE: Objection, Your Honor, leading.

11 THE COURT: It's preliminary. I'll allow it. Go  
12 ahead.

13 THE WITNESS: I filed state court petition. It  
14 was removed. I filed a motion to remand in Judge Norman's  
15 court.

16 BY MR. BURKS:

17 Q In Document Number 6, ECF Number --

18 MR. BURKS: Can we please put it on the screen.

19 MR. BAKER: 499-6.

20 MR. BURKS: What is it?

21 MR. BAKER: 499-6. The court has taken judicial  
22 notice of this document.

23 BY MR. BURKS:

24 Q Is this the document you filed that you were referring  
25 to?

1       A       Yes, sir.

2       Q       Without stating facts, describe what this lawsuit is in  
3       terms of the allegations that are in it because I want to  
4       understand the scope of the dispute and how it affects a  
5       credit bid, sir.

6               MR. FITZMAURICE:  I'll object Your Honor.  Your  
7       Honor's already taken judicial notice of the contents of  
8       this pleading for the fact that they were made.  Your Honor  
9       already has that information available.  It's not --

10              THE COURT:  I think the document speaks for  
11       itself, Mr. Burks.

12       BY MR. BURKS:

13       Q       Why would this document be relevant to a credit bid,  
14       sir?

15              MR. FITZMAURICE:  Objection, Your Honor.

16              THE COURT:  Go ahead.

17              MR. FITZMAURICE:  The question is calls for a  
18       legal conclusion about -- he's asking the witness to offer  
19       an opinion as to why this pleading is relevant.

20              THE COURT:  I'll sustain the objection.

21       BY MR. BURKS:

22       Q       Did you file this action on a contingency fee or an  
23       hourly fee basis?

24       A       Contingency.

25       Q       Why?

1 A The case has a lot of value and I'd get a percentage of  
2 that value. That's a good deal for me.

3 MR. BURKS: Nothing further, Judge.

4 THE COURT: All right. Thank you.

5 Mr. Choudhri?

6 MR. CHOUDHURI: (indiscernible)

7 THE COURT: Excuse me, sir. I can't hear you.

8 DIRECT EXAMINATION OF JEFF STEIDLEY

9 BY MR. CHOUDHURI:

10 Q What's your name, sir?

11 A Jeff Steidley.

12 Q And your occupation?

13 A Attorney.

14 Q And where did you graduate?

15 A Vanderbilt Law School, 1980.

16 Q The year I was born. And your experience, your  
17 background, which law firm did you start off at?

18 MR. FITZMAURICE: Objection, relevance, Your  
19 Honor.

20 THE COURT: What's the relevance, Mr. Choudhri?

21 MR. CHOUDHURI: Just laying a little background,  
22 Your Honor.

23 THE COURT: I don't need it. Thank you.

24 BY MR. CHOUDHURI:

25 Q What is the venue provision in the confidential

1 settlement agreement that has been entered in this case?

2 MR. FITZMAURICE: Objection, Your Honor. The  
3 agreement speaks for itself.

4 THE COURT: That document speaks for itself, Mr.  
5 Choudhri. I'll sustain the objection.

6 BY MR. CHOUDHURI:

7 Q Are you intending on filing the summary judgment in  
8 short order?

9 MR. FITZMAURICE: Objection, Your Honor.

10 THE COURT: Basis of the objection?

11 MR. FITZMAURICE: Is relevance. What counsel  
12 intends to do. I mean this is a very strange situation  
13 where the client is questioning the lawyer on the stand, one  
14 of many very strange issues in this case. It's not relevant  
15 to the issue of whether or not the bank is entitled to  
16 credit bid at the auction tomorrow.

17 THE COURT: I'll sustain the objection based on  
18 relevance. I don't think it's what he's going to do in the  
19 case is relevant to the issue that I have to decide which is  
20 currently whether the bank gets to credit bid or not.

21 BY MR. CHOUDHURI:

22 Q In your belief, who owns the note as we sit here today?

23 MR. FITZMAURICE: Objection, Your Honor. Mr.  
24 Steidley's belief on that issue is not relevant to  
25 whether --

1 THE COURT: I'll sustain the objection.

2 BY MR. CHOUDHURI:

3 Q How fast can this matter be decided, the case that  
4 you've brought?

5 MR. FITZMAURICE: Same objection, Your Honor.

6 THE COURT: I'll sustain the objection.

7 BY MR. CHOUDHURI:

8 Q If NBK wins a credit bid and it's found that NBK didn't  
9 own the note and lien in the venue under the confidential  
10 settlement agreement has stated, then what would be the  
11 outcome of who owns the property?

12 MR. FITZMAURICE: So objection, Your Honor, calls  
13 for a legal conclusion. And in fact, it calls for the  
14 lawyer to reveal his attorney work product and attorney-  
15 client communications. So those have all now been waived  
16 and we ask for an immediate production of all of those  
17 materials. He's asking him for his -- for his legal work  
18 product and the analysis of --

19 THE COURT: So at this point in time, he hasn't  
20 answered the question. If he were to answer, I think he'd  
21 waive privilege. He can claim it if he wants to. He's the  
22 person.

23 MR. FITZMAURICE: But Your Honor, it's a client.

24 THE COURT: I understand. I understand.

25 MR. FITZMAURICE: The client controls the

1 privilege, and he's --

2 THE COURT: I understand. But this is not a  
3 discovery matter. It's a matter for cash collateral, so --  
4 I mean, for credit bidding. So I'll sustain the objection  
5 at this point in time.

6 I'd ask you to ask another question, and just be  
7 aware that you may be waiving privilege.

8 MR. BURKS: Objection. 2425 WL, I'm their counsel,  
9 does not waive the privilege.

10 THE COURT: Okay. Go ahead.

11 MR. FITZMAURICE: Excuse me. The petition is by  
12 Mr. Choudhri --

13 THE COURT: Choudhri, personally. I understand.

14 MR. FITZMAURICE: -- and Mr. Steidley is --

15 THE COURT: Go ahead, sir. Ask your next  
16 question.

17 BY MR. CHOUDHURI:

18 Q I don't believe my question is without you revealing  
19 any privilege. My question is if the bank is a successful  
20 credit bid winner at an auction, which presumes it's buying  
21 it free and clear of all liens, and it's later found out  
22 through your case, a court, that they didn't hold the note  
23 and lien, what comes of who owns the property, Mr. Steidley,  
24 if you know?

25 MR. FITZMAURICE: So all the same --

1 MR. BURKS: Objection, irrelevant.

2 THE COURT: I'll sustain the objection, Mr. Burks'  
3 objection.

4 BY MR. CHOUDHURI:

5 Q Do the claims against NBK have value?

6 MR. FITZMAURICE: Objection, Your Honor.

7 THE COURT: Sorry. Bear with me. The objection  
8 is based on what?

9 MR. FITZMAURICE: He is asking the lawyer to offer  
10 an opinion as to the claim, the merit of the claims, which  
11 is for Your Honor to decide.

12 THE COURT: I'll sustain the objection.

13 MR. FITZMAURICE: Also, Your Honor, again, I would  
14 argue that the questions as to the merit of the claims is a  
15 question that's designed to reveal the contents of attorney-  
16 client communications or the lawyer's own work product.

17 THE COURT: If there's an adversary proceeding,  
18 then we can deal with that in the adversary proceeding or  
19 the remand, as the case may be.

20 Go ahead, Mr. Choudhri.

21 BY MR. CHOUDHURI:

22 Q Are you aware of a contingent expense lender willing to  
23 put up \$2 million to support the litigation against NBK?

24 MR. FITZMAURICE: Objection, lacks foundation,  
25 assumes facts not in evidence.



1 THE COURT: I'll sustain it. It's speculation.  
2 It'll sustain the objection.

3 BY MR. CHOUDHURI:

4 Q Do the claims against NBK have value?

5 MR. FITZMAURICE: Same objection.

6 THE COURT: I'll sustain the objection. Thank  
7 you.

8 BY MR. CHOUDHURI:

9 Q Were you in the room when Mr. Troop made his opening  
10 statements?

11 A I was.

12 Q You recall Mr. Troop making a statement, I'm sure it's  
13 on the record, that NBK gets a release along with a credit  
14 bid?

15 MR. FITZMAURICE: Objection, Your Honor. A  
16 release is a plan confirmation issue. It's not about credit  
17 bid.

18 THE COURT: I'll sustain the objection. It's plan  
19 confirmation, Mr. Choudhri.

20 MR. CHOUDHURI: I was just referring to his  
21 opening, Your Honor.

22 THE COURT: It's still plan confirmation, and I'm  
23 here on credit bidding.

24 BY MR. CHOUDHURI:

25 Q Are you aware the state court issued -- the state court

1     had a several day injunction hearing and issued a TI in  
2     favor of the debtor against NBK?

3             MR. FITZMAURICE:  Objection, Your Honor.  If there  
4     is such a ruling, then we could see that.  We could see the  
5     exhibit and they could look at it.

6             THE COURT:  I'll sustain the objection.  If you'd  
7     like to present it, feel free.

8             MR. CHOUDHURI:  Where is it?  March 2022?  I think  
9     it's an exhibit, Your Honor.

10    BY MR. CHOUDHURI:

11    Q     While he's doing that, do you have any knowledge as it  
12    relates to how the tax liens are treated in the settlement  
13    agreement and the proof of claim as it relates to the credit  
14    bid for the Bank of Kuwait?

15             MR. FITZMAURICE:  Objection, Your Honor.  Those  
16    documents speak for themselves and it mischaracterizes the  
17    evidence (indiscernible) --

18             THE COURT:  I'll sustain the objection.  Those  
19    documents speak for themselves and they're already in  
20    evidence.

21    BY MR. CHOUDHURI:

22    Q     What would happen to the tax liens once NBK accepted  
23    the tender of \$26 million?

24             MR. FITZMAURICE:  So objection, Your Honor -- Your  
25    Honor, excuse me.  Assumes facts not in evidence.  It's also

1 not relevant to credit bidding. It's asking about an  
2 unrelated issue.

3 THE COURT: And there's no foundation.

4 MR. FITZMAURICE: And there's no foundation.

5 THE COURT: I'll sustain the objection.

6 BY MR. CHOUDHURI:

7 Q Do you believe the bank fraudulently induced me and the  
8 debtor from entering into the confidential settlement  
9 agreement?

10 MR. FITZMAURICE: So objection, Your Honor.

11 THE COURT: I don't even know how he can answer  
12 that question. I'll sustain the objection.

13 BY MR. CHOUDHURI:

14 Q Mr. Steidley, have you seen this document?

15 A I have.

16 MR. CHOUDHURI: Can you scroll it up? Scroll it  
17 up.

18 BY MR. CHOUDHURI:

19 Q If you can just take a second and read this document,  
20 Mr. Steidley. What has it stated?

21 MR. FITZMAURICE: Your Honor, the document speaks  
22 for itself.

23 THE COURT: It does speak for itself.

24 Do you want to admit it into evidence, Mr.  
25 Choudhri?

1 MR. CHOUDHURI: Yes, Your Honor.

2 THE COURT: What ECF number is it? Let me ask you  
3 this question. Is this the lawsuit that led to the  
4 settlement agreement?

5 MR. CHOUDHURI: Yes, Your Honor.

6 THE COURT: Okay. Thank you.

7 MR. FITZMAURICE: Your Honor, on that basis, we  
8 would object on relevance grounds.

9 THE COURT: I'll sustain the objection as to  
10 relevance.

11 Mr. Choudhri, I think that the settlement  
12 agreement is very, very germane to what we're discussing.  
13 What happened leading up to that settlement agreement is not  
14 relevant at all. All right.

15 BY MR. CHOUDHURI:

16 Q Mr. Steidley, are you -- have you read any  
17 correspondence or are you aware that, as we sit here today,  
18 if the settlement agreement has been rescinded or if it was  
19 -- or if it was entered in being rescinded.

20 MR. FITZMAURICE: So objection, Your Honor,  
21 hearsay, assumes facts that are not in evidence.

22 THE COURT: And there's no foundation.

23 MR. FITZMAURICE: And there's no foundation.

24 THE COURT: I'll stay the objection. There's so  
25 many reasons to object to that question.

1           MR. FITZMAURICE: And Your Honor, I'm sorry for  
2 making this objection, but the time is what it is. We have  
3 the things on our schedule for today and for tomorrow.  
4 There's a clear pattern of what's happening in this case, of  
5 an attempt to run out the clock so that we can't get to --

6           THE COURT: Well, the clock's not going to run  
7 out. We'll go until we resolve this matter. We may not get  
8 to plan confirmation today, but we're going to resolve this  
9 matter today, as I entered in the order. And if we're here  
10 until 2:00 in the morning, we'll be here until 2:00 in the  
11 morning.

12           All right. But again, Mr. Choudhri, I'm going to  
13 warn you that your ability to simply go on and ask questions  
14 that I'm going to overrule over and over and over again,  
15 it's going to be very, very limited. So I'm going to ask  
16 you to ask a question that relates to the pleading that you  
17 filed. I'm happy to hear it. I'm giving you an awful lot  
18 of leeway, but I'm about to cut you off. Okay.

19           MR. CHOUDHURI: Okay.

20 BY MR. CHOUDHURI:

21 Q       What are the reasons that NBK should not be permitted  
22 to credit bid, Mr. Steidley?

23           MR. FITZMAURICE: Objection.

24           THE COURT: He can't answer that question.

25           Mr. Choudhri, you're done. Thank you. Sit down.

1           Mr. Fitzmaurice, do you have any questions for  
2   this witness?

3           MR. FITZMAURICE: I do not, Your Honor.

4           THE COURT: All right. Thank you.

5           You may be excused.

6           Mr. Burks, next witness?

7           MR. BURKS: 2425 WL, we rest on the evidence.

8           THE COURT: Thank you. All right.

9           MR. WETWISKA: Hold on. Can I -- can I be -- I've  
10   been subpoenaed here. Can I be excused, Your Honor?

11          THE COURT: I don't know what you've been  
12   subpoenaed on, sir. So you --

13          MR. WETWISKA: For this hearing. I received a  
14   subpoena Friday night.

15          THE COURT: Bear with me for one second. I don't  
16   know who you are. Come to the podium, sir.

17          MR. WETWISKA: My name is --

18          THE COURT: Come to the podium, sir. I need -- I  
19   need to be on the record.

20          MR. WETWISKA: Thank you. I do too. So Your  
21   Honor --

22          THE COURT: Bear with me. What's your name?

23          MR. WETWISKA: Your Honor, my name is Jim  
24   Wetwiska. I'm a lawyer here in town. I was subpoenaed  
25   Friday afternoon. I'm supposed to be in a focus group this

1 morning. I set everything aside to appear to accommodate  
2 this court. If I'm going to be called, I want to be called  
3 and I want to be released.

4 THE COURT: So bear with me one second, Mr.  
5 Wetwiska.

6 So does anybody intend to call him as a witness at  
7 any point in time today?

8 MR. BURKS: I've been told that I spoke in error,  
9 and I'm a representative of my client, and I have to retract  
10 my statement that I rest (indiscernible). I have two more  
11 witnesses to call, Judge.

12 THE COURT: Okay. Then I'm sorry, sir, I can't  
13 excuse you until we're done.

14 Okay. So who's your next witness, Mr. Burks?

15 MR. BURKS: Jim Wetwiska.

16 THE COURT: All right. Come on up. Come forward.

17 MR. WETWISKA: Can I just get my phone so I  
18 (indiscernible) --

19 THE COURT: Sure. Feel free.

20 MR. WETWISKA: Thank you.

21 THE COURT: Sir, if you'll step to the podium,  
22 I'll swear you in. Do you swear or affirm to tell the  
23 truth, the whole truth and nothing but the truth, so help  
24 you God?

25 MR. WETWISKA: I do, Your Honor.

1 THE COURT: All right. Please be seated, sir.

2 MR. WETWISKA: Thank you.

3 THE COURT: Go ahead, Mr. Burks.

4 DIRECT EXAMINATION OF JIM WETWISKA

5 BY MR. BURKS:

6 Q Sir, will you state your name for the record?

7 A Sure. Jim Wetwiska.

8 Q And how do you pronounce -- spell your last name, sir?

9 A W-E-T-W-I-S-K-A.

10 Q And what is your profession?

11 A I'm a lawyer.

12 Q And what do you do?

13 A Trial lawyer.

14 Q And do you have any knowledge of any legal matter in  
15 this case?

16 MR. FITZMAURICE: Objection, Your Honor.

17 THE COURT: That's such an open-ended question.  
18 Rephrase it, Mr. Burks.

19 THE WITNESS: (indiscernible) without being  
20 objected, so --

21 THE COURT: No, I sustained the objection. So ask  
22 another question, Mr. Burks.

23 THE WITNESS: Yes, I do have --

24 THE COURT: No. I sustained the objection. He  
25 needs to ask another question.



1                   Go ahead.

2       BY MR. BURKS:

3       Q     Sir, do you have any knowledge of litigation with  
4       respect to against NBK?

5                   MR. FITZMAURICE:  Objection, Your Honor, vague,  
6       lacks foundation.  What litigation?

7                   THE COURT:  Let's be more specific, Mr. Burks.

8                   MR. BURKS:  Well, let me get there, please, and  
9       I'll -- I apologize.

10      BY MR. BURKS:

11      Q     Sir, have you filed a lawsuit against NBK on behalf of  
12      any entity of which Mr. Choudhri is the representative?

13      A     I (indiscernible) --

14                   MR. FITZMAURICE:  Objection, vague as to time.

15                   MR. BURKS:  Ever.  Has he ever filed --

16                   THE COURT:  I'll overrule the objection.  It's  
17      preliminary.  Go ahead.

18                   THE WITNESS:  I did not file a lawsuit.  I came in  
19      as additional counsel in a matter in the summer of 2022 for  
20      Galleria 2425 Owner.

21      BY MR. BURKS:

22      Q     And what lawsuit was that, sir?  What was the subject  
23      matter of that lawsuit, that specific lawsuit?

24      A     The subject of the lawsuit was the 2425 Galleria  
25      building and the subject dealing with the note between the

1 National Bank of Kuwait and 2425 Galleria Owner.

2 Q And what were the causes of action alleged in that  
3 action?

4 MR. FITZMAURICE: Objection, Your Honor,  
5 relevance.

6 MR. BURKS: Response?

7 THE COURT: Go ahead.

8 MR. BURKS: Everyone's been talking about  
9 settlement agreement that came from this lawsuit, the scope  
10 of the litigation, disputes that are relevant here to credit  
11 bidding. This is what it's about. This is what --

12 THE COURT: I'm going to sustain the objection,  
13 Mr. Burks, and I'm going to give you my reason why. That  
14 litigation was taken and formalized into a settlement  
15 agreement.

16 MR. BURKS: All right.

17 THE COURT: It's the settlement agreement that's  
18 really relevant, if anything is relevant.

19 MR. BURKS: Sure.

20 THE COURT: So what happened in the litigation I  
21 don't really care about.

22 MR. TROOP: All right.

23 THE COURT: Okay. Go ahead.

24 BY MR. BURKS:

25 Q There was a settlement agreement that came from the

1 litigation that we're not going to discuss, correct?

2 A Correct.

3 Q All right, and in that settlement agreement, did the  
4 plaintiff have an opportunity or was there a basis for the  
5 provision for making a settlement payment amount to buy the  
6 note or the buy of the property?

7 MR. FITZMAURICE: Objection, Your Honor, vague, as  
8 to plaintiff, compound and the settlement agreement is in  
9 evidence. He can refer to its terms.

10 THE COURT: It's in evidence. It speaks for  
11 itself. If you want to ask him specific questions, then you  
12 can project and ask them. But the settlement agreement  
13 speaks for itself, Mr. Burks.

14 BY MR. BURKS:

15 Q Who was the plaintiff who had the ability or provision  
16 to pay money to NBK to buy the note and/or the property?

17 MR. FITZMAURICE: Objection, Your Honor,  
18 mischaracterizes the terms of the settlement agreement which  
19 are in evidence and can be reviewed.

20 THE COURT: I'll sustain the objection.

21 MR. BURKS: One moment, Your Honor.

22 THE COURT: You want to project him somewhere?

23 MR. BURKS: Mr. Baker is putting the settlement  
24 agreement up, Judge. Let's go down to Page 34.

25 BY MR. BURKS:

1 Q Have you seen this document before, sir?

2 A Yes, sir.

3 MR. BURKS: And let the record reflect that the  
4 settlement agreement previously admitted into evidence is on  
5 the screen, Judge.

6 BY MR. BURKS:

7 Q So the settlement agreement, which we all see, and  
8 Subparagraph D on Page 4, do you have any information or  
9 knowledge as to whether or not that settlement payment was  
10 ever tendered?

11 MR. FITZMAURICE: Objection, Your Honor, calls for  
12 a legal conclusion as to the word tendered. Also vague as  
13 tender. It's a legal concept.

14 THE COURT: I'll overrule the objection.

15 THE WITNESS: (indiscernible) I understand that  
16 there were numerous times when one of the parties in this  
17 settlement agreement were attempting to tender the -- it's  
18 not actually \$27 million when you take out the credits, but  
19 when they attempted to tender approximately \$26 million.

20 BY MR. BURKS:

21 Q Do you have knowledge as to -- yes or no question. Do  
22 you have personal knowledge as to why the tender was not  
23 completed?

24 MR. FITZMAURICE: Objection, Your Honor, personal  
25 knowledge as to why? Either it was or it wasn't.

1 THE COURT: I'll overrule the objection.

2 Do you know, sir?

3 THE WITNESS: I do know.

4 BY MR. BURKS:

5 Q Why was it -- why were -- the tenders that you just  
6 testified that were made, why were they not accepted?

7 MR. FITZMAURICE: So objection, Your Honor, again  
8 to the word tenders. And the question is designed to get  
9 the witness to testify as to why the bank or some  
10 representative of the bank did something. He doesn't have  
11 personal knowledge of that.

12 MR. BURKS: I don't --

13 THE COURT: Okay. I'll let him testify now and  
14 I'll basically determine -- I think it goes to weight. I  
15 don't think he can tell me what the bank did or didn't do,  
16 but you can tell me what the other side did.

17 Go ahead, answer the question.

18 BY MR. BURKS:

19 Q What did your client do?

20 A Well, let's be specific about who the parties are and  
21 what they voted to do, okay?

22 Q All right.

23 A Is that fair, Mr. Burks?

24 Q That is fair, sir. That is very fair. Who attempted  
25 to make a payment?

1       A       The --

2               MR. FITZMAURICE:  Objection, leading and calls --  
3       assumes facts not in evidence about attempting to make a  
4       payment.

5               THE COURT:  I'm going to overrule the objection.  
6               Go ahead.

7               THE WITNESS:  There are a number of them.  And  
8       maybe if I can just start in order?

9               MR. BURKS:  Please, sir.

10              THE WITNESS:  The first is, I understand, and what  
11       I observed was in the spring, approximately February and  
12       March of 2022, that there was some type of arrangement where  
13       Mr. Choudhri was going to make a payment to purchase the  
14       promissory note.  And that payment was being made based upon  
15       an arrangement that Mr. Choudhri had reached with Mr.  
16       Caldwell initially.

17              MR. FITZMAURICE:  So objection, Your Honor.  If  
18       there's an arrangement, if there's a document, let's look at  
19       it.

20              THE COURT:  I'm going to overrule the objection  
21       and let him go ahead and testify.

22              Go ahead.

23              MR. BURKS:  All right, Your Honor.

24       BY MR. BURKS:

25       Q       Anything else?  What happened to this agreement that

1     you were the attorney for?

2     A     Well, those are two different questions.

3             THE COURT:  Mr. Wetwiska, I want to make sure that  
4     you're testifying as to personal knowledge and not  
5     speculating at any point in time.  So be very careful of  
6     what you tell me.  Okay?  If you have personal knowledge,  
7     fine.  If you don't know, that's fine.  So I just want to  
8     know what you know.  Okay.

9             THE WITNESS:  Well, that's what I'm trying to do,  
10    Your Honor.

11            THE COURT:  I appreciate that.

12            THE WITNESS:  Let's be on the same page.  It is a  
13    little difficult because I was the lawyer and I have  
14    personal knowledge.

15            THE COURT:  Who did you represent?

16            THE WITNESS:  I represented -- originally I  
17    represented Galleria 2425 Owner.

18            THE COURT:  Okay.

19            THE WITNESS:  Then, as after the settlement  
20    agreement was signed, going forward, I represented Galleria  
21    2425 Owner and Mr. Choudhri.

22            THE COURT:  Okay.

23            THE WITNESS:  And so I have -- I have knowledge  
24    regarding things that took place --

25            THE COURT:  For your client?

1           THE WITNESS:  -- after this settlement.  Yes.  For  
2 my client.

3           THE COURT:  Okay.  All right.

4           THE WITNESS:  So that's part of the issue here is  
5 I also have to be careful not to disclose attorney-client  
6 information.  So I'm trying to do the best I can with all  
7 those.

8           THE COURT:  Okay.  Thank you.

9           MR. BURKS:  And I'm trying to be careful with my  
10 questions, Judge, because I don't know what this witness is  
11 about to testify to, and that's just a fact.

12 BY MR. BURKS:

13 Q       So sir, you answered that you acknowledged that a  
14 payment was -- whether you wanted to use submitted,  
15 tendered, made, but that it wasn't accepted.  What happened?  
16 Just tell us what happened.

17           MR. FITZMAURICE:  Objection.  Objection, Your  
18 Honor.

19           THE COURT:  I don't think he can tell me whether  
20 it's accepted or not.  You can say one side of the story.  
21 But --

22           THE WITNESS:  Let me -- maybe if I can address it  
23 this way.  First, Mr. Caldwell, with respect to that issue,  
24 there was a set of circumstances that took place where, as I  
25 understand it, and as was communicated to me at the time,



1 and this is not a privileged communication that's being  
2 disclosed, which is that Mr. Caldwell --

3 MR. FITZMAURICE: Your Honor, then objection. All  
4 of this is hearsay testimony that's designed to get into  
5 evidence what Your Honor excluded when we had Mr. Alexander  
6 on the stand on the same issue.

7 THE COURT: I'm going to overrule the objection.  
8 I'm going to let him testify.

9 Go ahead, sir.

10 THE WITNESS: Is that Mr. Caldwell contacted Mr.  
11 Choudhri and Mr. Choudhri's employee, Kelly Williams, and  
12 informed them that he had found out that the note that Mr.  
13 Choudhri was paying off was \$26 or \$27 million,  
14 substantially below the amount that the note was for. And  
15 as a result of that, he was not going to move forward with  
16 Mr. Choudhri.

17 MR. FITZMAURICE: Objection, Your Honor. The  
18 source of that information was Mr. Choudhri?

19 THE COURT: I don't know.

20 MR. FITZMAURICE: It's hearsay and --

21 THE COURT: It's hearsay, and it goes to weight.  
22 I take your objection.

23 Go ahead.

24 THE WITNESS: I mean, this --

25 MR. FITZMAURICE: Your Honor, there's no question

1 pending.

2 THE WITNESS: Right.

3 THE COURT: Okay. Go ahead.

4 BY MR. BURKS:

5 Q Do you have conversations with Mr. Caldwell?

6 A Mr. Caldwell would not return my call.

7 Q Hm? Did you --

8 A So the answer is no. The answer is no. Yeah.

9 Q Did you have conversations with the prospective  
10 financier or buyer after the settlement agreement was  
11 entered into?

12 MR. FITZMAURICE: Objection, Your Honor, vague.  
13 We're talking about, I think, different points in time, and  
14 we need to identify who these parties are.

15 THE COURT: Yeah. Be more specific, Mr. Burks.

16 BY MR. BURKS:

17 Q Subsequent to the settlement agreement, do you have  
18 personal knowledge as to why (indiscernible) a payment was  
19 made?

20 A Why what? I didn't hear you, sir. Why what?

21 Q Do you have personal knowledge as to whether a payment  
22 was made for \$26 million that you testified to earlier?

23 A So the first instance that I was aware of where a  
24 tender was attempted to be made was with Mr. Caldwell. The  
25 second instance has to do with Security State Bank, or I

1 can't remember the name of the bank, but it was a bank that  
2 Mr. Choudhri was dealing with to arrange financing to close  
3 on in order to pay the \$26 million, approximately \$26  
4 million.

5 Q Did you personally (indiscernible) --

6 MR. FITZMAURICE: Objection. Objection, Your  
7 Honor. The question was, was a payment made? The answer  
8 was an entirely different topic. And with respect to  
9 tender, there would be evidence of --

10 THE COURT: I'll sustain your objection.

11 Go ahead and ask another question.

12 BY MR. BURKS:

13 Q Is there -- are you aware -- is there -- who drafted  
14 that settlement agreement?

15 A I can tell you that Mr. Conrad drafted portions of it,  
16 that my office drafted portions of it. There were numerous  
17 lawyers involved. Mr. Choudhri had other lawyers, and  
18 Galleria 2425 had other lawyers representing them at the  
19 time. Allen Zwernemann was involved in drafting it. Seth  
20 Nichamoff was involved in drafting it. Mr. Conrad had an  
21 associate, which I can't remember his name, was involved in  
22 drafting it. And there were lots of conversations. In  
23 fact, the mediator, I think, was Mickey Mills. Mickey Mills  
24 was involved in drafting that settlement agreement, and it  
25 was iterative. Is that the right word?

1 MR. TROOP: Yes.

2 THE WITNESS: And we started -- we started at a  
3 mediation. And over the course of a number of days  
4 following that mediation, there were drafts sent back and  
5 forth. And then finally the document was signed whatever  
6 the date is on the document.

7 BY MR. BURKS:

8 Q And so without your giving any specifics as to your  
9 opinion on the weight of any disputes, is it fair to say, in  
10 your opinion, that there is now a dispute subsequent to  
11 enactment -- subsequent to execution of settlement  
12 agreement, as to whether or not Mr. Ali Choudhri or any of  
13 his entities performed on the \$27 or \$26 million payment?

14 MR. FITZMAURICE: Objection, Your Honor, lacks  
15 foundation. The question also said, I don't want you to  
16 give an opinion, but then said, what's your opinion?

17 THE COURT: I'll sustain the objection.

18 THE WITNESS: Yes.

19 THE COURT: I sustained the objection, sir.  
20 Strike that answer from the record.

21 THE WITNESS: I can't -- the problem, I can't hear  
22 with this (indiscernible) --

23 THE COURT: I apologize, but if we shut that, then  
24 the whole computer blows up (indiscernible) --

25 THE WITNESS: You're talking that way and it's

1 hard to hear with this (indiscernible) --

2 THE COURT: Is that better? Earlier it seemed too  
3 loud. Okay.

4 MR. BURKS: Your Honor, my final set of two  
5 questions will be to put a lawsuit up. Is this it? This is  
6 one of the lawsuits that the court has taken judicial notice  
7 of, and I'd like to see if I can get this question.

8 BY MR. BURKS:

9 Q Have you seen this document before, sir?

10 MR. FITZMAURICE: Objection, relevance. The point  
11 here is to get Mr. Wetwiska's opinion as to the merits of  
12 this case and whether it represents a bona fide dispute.

13 THE COURT: What's the relevance, Mr. Burks?

14 MR. BURKS: The relevance is to identify whether  
15 this document, whether this lawsuit, it arises from a  
16 dispute on who breached or whether anyone breached the terms  
17 of the settlement agreement that counsel has been talking  
18 about more than I have.

19 MR. FITZMAURICE: Well, then lacks foundation. We  
20 don't know whether Mr. Wetwiska has any knowledge about what  
21 this lawsuit is about, what its facts are, any of the  
22 underlying circumstances.

23 MR. BURKS: (indiscernible) my first question.

24 MR. FITZMAURICE: And in any event, Your Honor has  
25 already determined to take judicial notice of the --

1           THE COURT: I'm going to overrule the objection  
2     and let you ask the question that you asked, whether he has  
3     any knowledge of this litigation.

4           Go ahead, Mr. Burks. You can ask the question one  
5     more time.

6     BY MR. BURKS:

7     Q     Do you have any knowledge of this litigation, sir?

8     A     Can you go to the last page so I can see who signed it?

9     Q     Yes, sir.

10    A     I do have knowledge.

11    Q     Without stating whether you believe this lawsuit has  
12    merits, has damages, is good or bad, does this lawsuit arise  
13    out of a dispute as to whether or not the \$27 million was  
14    tendered?

15           MR. FITZMAURICE: Objection, Your Honor. The  
16    pleading speaks for itself. This is --

17           THE COURT: I'll sustain the objection. I think  
18    the settlement agreement and the pleadings speak for  
19    themselves, Mr. Burks.

20           MR. BURKS: Yes, Your Honor (indiscernible). I  
21    agree. I've read the prayer. It does speak for itself.  
22    Nothing further, Your Honor.

23           THE COURT: Happy to see that you agree with me,  
24    Mr. Burks, for once.

25           MR. BURKS: I hope we're right.

1           THE COURT: Mr. Choudhri? Mr. Choudhri, I'll warn  
2     you, you're on a very, very short leash. Okay.

3           DIRECT EXAMINATION OF JIM WETWISKA

4     BY MR. CHOUDHURI:

5     Q     Mr. Wetwiska, I just want to clarify. You testified  
6     March 2022, I think. Did you mean March 2022 or did you  
7     mean March 2023?

8           MR. FITZMAURICE: Objection, leading.

9           THE COURT: I sustained the objection.

10          MR. CHOUDHURI: Well --

11          THE COURT: You can't suggest an answer to your  
12     question, Mr. Choudhri. I know you're not a lawyer, but ask  
13     the question that's open-ended.

14     BY MR. CHOUDHURI:

15     Q     Mr. Wetwiska, earlier you testified that a timeframe,  
16     and I think you said March. Did you -- I'm trying my best  
17     not to -- because I heard 2022. I just want to clarify, did  
18     you mean 2022 or 2023?

19     A     The timeframe that I was referring to would have been  
20     in the spring of 2023. The settlement agreement was signed  
21     in the fall of 2022.

22     Q     Correct (indiscernible) so that was correct. And Mr.  
23     Wetwiska, you're aware of the settlement agreement  
24     (indiscernible) 1.6, Mr. Wetwiska?

25     A     Yes, sir.

1 Q And it says Galleria, released parties means Galleria  
2 and all of its present or past present successor, including  
3 the (indiscernible) loan agreement. Do you see that?

4 A I do.

5 Q So when this agreement was signed, the Bank of Kuwait  
6 was releasing Galleria and all of its managers, members,  
7 including (indiscernible).

8 MR. FITZMAURICE: Objection, Your Honor. The  
9 document speaks for itself.

10 THE COURT: I'll sustain the objection.

11 BY MR. CHOUDHURI:

12 Q Are you aware that -- so did you ask National Bank of  
13 Kuwait for the loan sale agreement in the timeframe of Feb.  
14 to March 2023?

15 MR. FITZMAURICE: Objection, Your Honor, best  
16 evidence rule.

17 THE COURT: I'll sustain the objection.

18 BY MR. CHOUDHURI:

19 Q Did you have conversations with Mr. Conrad around  
20 spring of 2023?

21 MR. FITZMAURICE: Objection, Your Honor, hearsay,  
22 and also --

23 THE COURT: I'll sustain the objection.

24 BY MR. CHOUDHURI:

25 Q Was it not a requirement by the bank to provide a loan



1 sale agreement?

2 MR. FITZMAURICE: Objection, Your Honor, leading.

3 THE COURT: I'll overrule the objection. You can  
4 answer that question.

5 THE WITNESS: That was my understanding, yes.

6 BY MR. CHOUDHURI:

7 Q And did you ask them for a loan sale agreement?

8 MR. FITZMAURICE: Objection, Your Honor, best  
9 evidence rule.

10 THE COURT: I'll sustain the objection.

11 MR. SATHER: 499-44.

12 MR. CHOUDHURI: So 499?

13 MR. SATHER: 41.

14 MR. BAKER: 499-41.

15 BY MR. CHOUDHURI:

16 Q Are you aware that there was an offer made  
17 (indiscernible) in the end of June 2023 to purchase a note?

18 MR. FITZMAURICE: Objection, Your Honor, best  
19 evidence rule, also calls for a legal conclusion as to  
20 whether an offer specifically was made.

21 THE COURT: I'll sustain the objection.

22 MR. CHOUDHURI: Let me put up the document.

23 THE COURT: Please.

24 MR. BAKER: 499, what? 499-41?

25 THE COURT: The problem is -- we're off the

1 record.

2 (Recess)

3 BY MR. CHOUDHURI:

4 Q Mr. Wetwiska, do you know who Sonder is?

5 MR. FITZMAURICE: Objection, relevance, Your  
6 Honor.

7 THE COURT: What's the relevance?

8 MR. CHOUDHURI: Just the acts of the bank, Your  
9 Honor, (indiscernible) of performance.

10 THE COURT: I'll sustain the objection.

11 BY MR. CHOUDHURI:

12 Q Mr. Wetwiska, is this -- Mr. Wetwiska, did you receive  
13 this letter, dated June 28, 2023, from the Pillsbury law  
14 firm? Does this look familiar?

15 A Can you scroll down so I can read it? Can you go to  
16 the signature? I did receive it, yes.

17 Q And at the time you received this, you were  
18 representing me, correct?

19 A Correct, Mr. Choudhri.

20 Q And have you went back and checked your records since  
21 the receipt of this letter, if there was ever a subsequent  
22 letter that withdrew this letter?

23 A There was no withdrawal of this letter by anyone.

24 MR. CHOUDHURI: I'd like to submit this letter to  
25 the record, Your Honor.

1 THE COURT: ECF number?

2 MR. FITZMAURICE: Your Honor, it's 499.36.

3 There's no objection.

4 THE COURT: All right. 499-36 is admitted.

5 (Trial Exhibit 499-36 entered into evidence)

6 THE COURT: Mr. Choudhri, next question. It was  
7 actually 36.

8 BY MR. CHOUDHURI:

9 Q Mr. Wetwiska, on the confidential settlement agreement,  
10 did your firm draft the confidentiality provisions?

11 MR. FITZMAURICE: Objection, Your Honor,  
12 relevance. And I think the witness already testified.

13 THE COURT: Asked and answered. I'll sustain the  
14 objection. Thank you.

15 BY MR. CHOUDHURI:

16 Q Was there a confidentiality provision?

17 MR. FITZMAURICE: Objection, Your Honor, best  
18 evidence.

19 THE COURT: I'll sustain the objection.

20 MR. CHOUDHURI: I'll pull up the document.

21 THE COURT: Well, the document also speaks for  
22 itself, Mr. Choudhri. I can read it. Thank you. And I  
23 really am trying to get your ex- lawyer or former lawyer out  
24 of here as quickly as possible.

25 BY MR. CHOUDHURI:

1 Q Mr. Wetwiska, are you aware that that offer was  
2 accepted that was made at the end of June by me?

3 MR. FITZMAURICE: Objection, Your Honor, best  
4 evidence again.

5 THE COURT: I'll sustain the objection.

6 BY MR. CHOUDHURI:

7 Q Do you have any knowledge of -- do you have knowledge  
8 of multiple attempts to pay the bank being made?

9 THE COURT: Objection, Your Honor.

10 THE WITNESS: Yes.

11 THE COURT: What's the objection, please?

12 MR. FITZMAURICE: If there -- if there are  
13 attempts to pay the bank, then there will be a document that  
14 shows that.

15 THE COURT: Yeah. I'll sustain the objection.

16 BY MR. CHOUDHURI:

17 Q Mr. Wetwiska, as we're sitting here today, you're still  
18 representing me in other matters?

19 A I am representing you in a different matter. Yes.

20 Q Yes. So we still retain an attorney-client privilege.

21 MR. FITZMAURICE: Objection, relevance, Your  
22 Honor.

23 THE WITNESS: I think we --

24 THE COURT: I'll sustain the objection --

25 THE WITNESS: -- we have it no matter what.

1 MR. CHOUDHURI: Thank you.

2 BY MR. CHOUDHURI:

3 Q Mr. Wetwiska, I just want to make sure we have this.  
4 You've seen a letter from Pillsbury at ECF 251-11?

5 MR. FITZMAURICE: Your Honor --

6 THE COURT: Best evidence?

7 MR. FITZMAURICE: Yeah, asked and answered. This  
8 exhibits is in evidence.

9 BY MR. CHOUDHURI:

10 Q Have you seen this letter before, Mr. Wetwiska, that  
11 was forwarded to you?

12 MR. FITZMAURICE: Objection, Your Honor, leading,  
13 as to it was forwarded to you, but also relevance as to  
14 whether or not Mr. --

15 THE COURT: I'll sustain the objection. Thank  
16 you.

17 BY MR. CHOUDHURI:

18 Q Mr. Wetwiska, are you familiar with a letter dated  
19 April 28th that was --

20 THE COURT: I've already sustained the objection.  
21 If you want to get it in, you've got to do it some other  
22 way. But I've sustained the objection. I'm not going to  
23 admit that based on his testimony.

24 BY MR. CHOUDHURI:

25 Q Can you describe the occurrences of the interference by

1 the Bank of Kuwait from the debtor or me performing to pay  
2 the \$26 million?

3 MR. FITZMAURICE: So objection, leading, as to  
4 interferences, lacks foundation, assumes facts not in  
5 evidence. It also, I think, asks Mr. Wetwiska to reveal his  
6 own work product as to his legal conclusions as to whether  
7 or not those tests have been satisfied.

8 THE COURT: I'll sustain the objection based on  
9 lack of foundation.

10 BY MR. CHOUDHURI:

11 Q Mr. Wetwiska, you've had conversations and  
12 communications with Mr. Conrad, that Mr. Conrad represents  
13 the Bank of Kuwait, correct?

14 MR. FITZMAURICE: Sorry. Objection, compound.  
15 Which is the question?

16 THE COURT: Ask the question one at a time, Mr.  
17 Choudhri.

18 BY MR. CHOUDHURI:

19 Q Does Mr. Conrad represent the Bank of Kuwait -- the  
20 National Bank of Kuwait?

21 A That's my understanding, yes.

22 Q And most of the communications dealing with this  
23 transaction have been with you and Mr. Conrad?

24 MR. FITZMAURICE: Objection, Your Honor --

25 THE WITNESS: I think that's --

1           MR. FITZMAURICE:  Objection, Your Honor, vague as  
2   to this transaction and also relevance to whether or not the  
3   bank's entitled to credit bid at the auction tomorrow.

4           THE COURT:  I'll allow the answer to that question  
5   and then you can urge your objection.  I want to know where  
6   Mr. Choudhri is going.  You can answer that question.

7           THE WITNESS:  I think it's accurate to state that  
8   the conversations were mainly between me and Mr. Conrad.

9   BY MR. CHOUDHURI:

10   Q     So to complete a transaction or consummate a  
11   transaction, whether it's the actual deal documents that on  
12   a closing that get done, that would be communications, phone  
13   conversations or communications you had with Mr. Conrad,  
14   correct?

15   A     In the beginning, they were by phone.  As things became  
16   contentious over the summer of 2023, I think that Mr. Conrad  
17   and I started putting more things in writing.  But prior to  
18   that, there was more of a dialogue between the two of us,  
19   and there was obviously a dispute that arose in the summer  
20   of 2023 with respect to the settlement agreement and those  
21   things.  We ended up trying to document as much as possible,  
22   was my view.

23   Q     And so, following up on that question, one of the  
24   material elements of completing the loan sale acquisition  
25   would be a loan sale agreement, correct?

1 MR. CHOUDHURI: Objection, leading.

2 THE COURT: I'll sustain the objection.

3 BY MR. CHOUDHURI:

4 Q What material document would be needed to consummate a  
5 loan sale?

6 MR. FITZMAURICE: Objection, as to material.

7 THE COURT: I'll overrule the objection.

8 THE WITNESS: Well, we needed a loan sale  
9 agreement. We needed what is called, I think, an allonge is  
10 the right word. There was one other document, and in order  
11 to consummate it, those documents had to be approved and  
12 satisfactory to the National Bank of Kuwait.

13 BY MR. CHOUDHURI:

14 Q And did you ask Mr. Conrad for those documents around  
15 the Feb./March 2023 timeframe?

16 MR. FITZMAURICE: Objection, Your Honor, best  
17 evidence.

18 THE COURT: I'll sustain the objection.

19 BY MR. CHOUDHURI:

20 Q So your conversations, I think you said, were mainly  
21 verbal, and then later, when things got contentious, they  
22 were in writing.

23 A Right --

24 MR. FITZMAURICE: Objection, Your Honor, leading.

25 THE COURT: I'll sustain the objection.



1 BY MR. CHOUDHURI:

2 Q What would be necessary -- I just asked this and so I  
3 won't ask it again. Sorry. Are you aware of Security State  
4 Bank of Texas, who that is?

5 A Yes.

6 Q Do you recall having some conversations with Security  
7 State Bank of Texas?

8 A Numerous conversations, yes.

9 Q And what is the first thing they needed to move forward  
10 to fund the loan takeout?

11 MR. FITZMAURICE: Objection, Your Honor, lacks  
12 foundation is to fund the loan takeout. Also hearsay as to  
13 any communications with the bank.

14 THE COURT: I'll sustain the objection as to  
15 hearsay.

16 BY MR. CHOUDHURI:

17 Q Did the settlement agreement have further assurances  
18 provisioned where things that need to get done to consummate  
19 a transaction, parties have to act in good faith to do so?

20 MR. FITZMAURICE: Objection, Your Honor, best  
21 evidence.

22 THE COURT: Again, the document speaks for itself.

23 BY MR. CHOUDHURI:

24 Q Are you aware of Security State Bank being ready,  
25 willing and able to finance the loan sale from the National

1 Bank of Kuwait?

2 MR. FITZMAURICE: Objection, Your Honor, lacks  
3 foundation, also hearsay as to the conduct of the bank.

4 THE COURT: I'll sustain the objection.

5 BY MR. CHOUDHURI:

6 Q About how many times did you ask for a loan sale  
7 agreement?

8 MR. FITZMAURICE: Objection, Your Honor, hearsay  
9 offered for the truth, to prove the truth of the matter.  
10 Also, if there were requests, we should be able to look at  
11 the emails or other correspondence related to that.

12 THE COURT: I'll allow you to answer the question  
13 as to did you make any email requests?

14 THE WITNESS: I did, yes.

15 THE COURT: How many times?

16 THE WITNESS: It would have been somewhere during  
17 the time of February or March of 2023 and then in connection  
18 with the security or -- can you restate the --

19 MR. CHOUDHURI: Security State Bank.

20 THE WITNESS: Security State bank during the  
21 conversations with Mr. Conrad on a security statement. So  
22 those would have been the two oral, the only two times that  
23 I remember orally. As I said, in the summer, Mr. Conrad was  
24 interested in talking to us really. Things got heated at  
25 the courthouse.

1 MR. FITZMAURICE: Your Honor, I think we've gone  
2 far afield from what the question was.

3 THE WITNESS: And so we --

4 THE COURT: Yeah. I asked the question. So I'll  
5 cut you off.

6 THE WITNESS: Okay.

7 THE COURT: Thank you. Go ahead and ask the next  
8 question.

9 BY MR. CHOUDHURI:

10 Q Do you know any reason why the Bank of Kuwait would not  
11 provide a loan sale agreement, which is a transactional  
12 document to consummate the deal?

13 MR. FITZMAURICE: Objection, Your Honor. The  
14 witness has -- calls for speculation. The witness has no  
15 way to know.

16 THE COURT: There's no foundation.

17 MR. FITZMAURICE: Yeah.

18 THE COURT: I'll sustain the objection.

19 BY MR. CHOUDHURI:

20 Q The settlement agreement -- so let me back up. Your  
21 request for the loan sale agreement from Charles Conrad was  
22 within the period allotted to pay the bank the \$26 million?

23 A Yes.

24 Q So that period had not expired, the settlement payment  
25 date had not come and gone at that point, correct?

1       A       Correct.

2       Q       And then you asked him for the loan sale agreement in  
3       writing possibly later. I think maybe around June. Is that  
4       --

5               MR. FITZMAURICE: Objection, Your Honor, leading.

6               THE COURT: I'll sustain the objection. You can't  
7       suggest the answer to your question, Mr. Choudhri.

8       BY MR. CHOUDHURI:

9       Q       Are you aware that -- did you -- are you aware that  
10      when the district court stopped -- let me back up. Did the  
11      Bank of Kuwait move to appoint a receiver in the spring of  
12      2023?

13      A       They moved to appoint either receiver or  
14      conservatorship or one of those two things during the time  
15      period that we were discussing with Security State Bank  
16      providing the funding, yes.

17      Q       And were you on conversations with Security State Bank  
18      when they said to move forward they needed a loan sale  
19      agreement?

20      A       Yes.

21      Q       So that was a requirement by Security State Bank is we  
22      need a loan sale agreement before we can proceed.

23      A       Correct.

24               MR. FITZMAURICE: Objection, hearsay.

25               THE COURT: It's hearsay, and I'll sustain the

1 objection. Sorry.

2 A Which one's Chris?

3 BY MR. CHOUDHURI:

4 Q Do you recall who the receivership -- was it  
5 (indiscernible) --

6 MR. FITZMAURICE: Objection, relevance.

7 THE COURT: I'll sustain the objection as to  
8 relevance.

9 BY MR. CHOUDHURI:

10 Q Are you aware that there is a pending lawsuit for the  
11 breach of contract of the settlement agreement?

12 MR. FITZMAURICE: Objection, Your Honor, lacks  
13 foundation.

14 THE COURT: I'll sustain the objection.

15 BY MR. CHOUDHURI:

16 Q Was the payment, the down payment made in the  
17 settlement agreement?

18 A Yes.

19 Q So the payment outstanding is the \$26,038,000?

20 MR. FITZMAURICE: Objection, lacks foundation.

21 THE COURT: I'll overrule the objection.

22 BY MR. CHOUDHURI:

23 Q Do you have any belief or do you have any knowledge or  
24 understanding of why the bank refused to accept the \$26  
25 million?

1           MR. FITZMAURICE:  Objection, Your Honor, calls for  
2   speculation and assumes facts not in evidence.

3           THE COURT:  I'll sustain the objection.  Thank  
4   you.

5   BY MR. CHOUDHURI:

6   Q     Mr. Wetwiska, do you have kind of a background of what  
7   my challenges have been?

8           MR. FITZMAURICE:  Objection, relevance, Your  
9   Honor.

10          THE COURT:  I'll sustain the objection.

11   BY MR. CHOUDHURI:

12   Q     Do you have any knowledge of the structure of the loan  
13   designed by the bank?

14          MR. FITZMAURICE:  Same objection, Your Honor.  It  
15   also assumes facts not in evidence.

16          THE COURT:  I'll sustain the objection.

17   BY MR. CHOUDHURI:

18   Q     Were you successful in getting depositions compelled in  
19   the state court case?

20   A     Yes.

21          MR. FITZMAURICE:  Objection, Your Honor,  
22   relevance.

23          THE COURT:  It's not relevant.  I'll sustain the  
24   objection.  Again, you're reading on thin ground, Mr.  
25   Choudhri.  I'm giving you a lot of leeway.  Ask questions

1     that are relevant to what we want to hear or I'm going to  
2     cut you off.

3     BY MR. CHOUDHURI:

4     Q     Did you have conversations with the trustee in this  
5     case regarding the issues with the National Bank of Kuwait?

6     A     The Chapter 7 trustee, 11 trustee?

7     Q     Chapter 11 trustee, Chris Murray.

8     A     Chris Murray. I did, yes, and his counsel.

9     Q     And do you remember who all was on this call?

10           MR. FITZMAURICE:  Objection, Your Honor, relevance  
11     to whether the bank can credit bid tomorrow.

12           THE COURT:  Yeah.  I'll sustain the objection.  
13     It's not relevant.

14     BY MR. CHOUDHURI:

15     Q     When the bank -- if at any time they did provide a loan  
16     sale, do you have any knowledge of the bank's interference  
17     with lease up of the building --

18           MR. FITZMAURICE:  Objection, Your Honor.

19     BY MR. CHOUDHURI:

20     Q     -- after the settlement was entered?

21           MR. FITZMAURICE:  Objection, Your Honor, as to  
22     leading, as to interference.

23           THE COURT:  Say that again.  I didn't hear you.

24           MR. FITZMAURICE:  Leading us to the use of the  
25     term interference.  Also assumes facts that are not in

1 evidence and lacks foundation.

2 THE COURT: I'll sustain the objection.

3 You get one more question, Mr. Choudhri, before I  
4 cut you off. Make it a good one.

5 BY MR. CHOUDHURI:

6 Q Were there proposals, lease proposals that you were  
7 involved in where the bank was being asked to approve and  
8 they were not cooperative?

9 MR. FITZMAURICE: Objection, vague as to time. If  
10 any proposals, would be in writing and we could look at that  
11 as best evidence, also lacks foundation.

12 THE COURT: I'll sustain the objection, Mr.  
13 Choudhri.

14 MR. CHOUDHURI: No more questions.

15 THE COURT: Thank you.

16 MR. CHOUDHURI: Pass the witness.

17 THE COURT: All right. Thank you.

18 Mr. Fitzmaurice?

19 MR. FITZMAURICE: With the court's permission,  
20 I'll have my partner, Mr. Conrad, cross-examine the witness.

21 THE COURT: Sure. That's fine. I just want to  
22 get Mr. Wetwiska out of here. So if we can finish with him,  
23 I'd appreciate it.

24 MR. CARTER: And I'll do it very quickly, Your  
25 Honor.



1 THE COURT: That's fine. Come on over.

2 MR. CONRAD: So 499-41.

3 MR. FITZMAURICE: And Your Honor, I think I'll be  
4 projecting from over here.

5 THE COURT: That's fine. Thank you.

6 CROSS-EXAMINATION OF JIM WETWISKA

7 BY MR. CONRAD:

8 Q Good afternoon, Mr. Wetwiska.

9 A Good afternoon.

10 Q I understand you need to get out of here pretty  
11 quickly, so I'm going to try to make this quick.

12 A Take your time.

13 Q All right. Well, it's good to see you again.

14 A I'm happy to help the court out.

15 Q All right. Well, I just wanted to start by getting  
16 some like dates right, as much as we can. So you understand  
17 that the settlement agreement was August of 2022, correct?

18 A Yes.

19 Q All right, and I understand the document, but you  
20 understand that there was a period of time for performance  
21 by Choudhri Galleria 2425 or some other buyer. What was  
22 that date or what was that timeframe?

23 A I believe it was March 20, 2023. But you can look at  
24 the document.

25 Q Right. I mean, the document says that there was 210

1 days for performance.

2 A Yeah, I'd defer to the document, but it was -- we  
3 negotiated hard on that provision.

4 Q Right. Seven months, right?

5 A I think -- I think there about. Yes, sir, Mr. Conrad.

6 Q All right. Did Choudhri or any of the Choudhri  
7 entities, the debtor, Galleria 2425 Owner, LLC, ever tender  
8 full payment during that 210 days?

9 A They never presented a check during that time period.

10 Q Did they ever present anything saying that we will pay  
11 you the \$26 million and change, which is the difference  
12 after the credits, within that 210 days?

13 A I don't remember one way or the other.

14 Q Okay. So after March 20, 2023, there was a notice of  
15 default letter issued by the bank to the debtor. Do you  
16 remember that?

17 A Yes.

18 Q Okay. Do you remember -- let me go back and ask you  
19 some questions about Mr. Paul Caldwell. Have you ever  
20 spoken to Mr. Paul Caldwell?

21 A Never.

22 Q Okay. Do you know who he is?

23 A I know generally who he is. I know he was -- he's an  
24 investor. But I've never spoken to him. I've tried to  
25 reach out to him. He did not return my calls.

1 Q Do you recall in the January, February, early March  
2 2023 timeframe that I reached out to you and stated that Mr.  
3 Paul Caldwell had contacted?

4 A I don't remember if you reached out to me or if I asked  
5 you if he had. I don't remember how that happened. It was  
6 one way or the other. But I do remember there was a  
7 conversation by us about Mr. Caldwell, and you forwarded  
8 something to me. I do remember that.

9 Q Do you recall that, going back to April of 2023, you  
10 were asked questions about the appointment or the motion to  
11 appoint a receiver? Do you recall when that hearing day was  
12 scheduled being around April 12, 2023?

13 A I don't remember. I mean, if you have the date, I  
14 don't remember the date.

15 Q Sure, we can pull it up, but it's not material. So the  
16 point is that you recall that there was a new lawsuit filed  
17 against the bank immediately before the hearing on the  
18 motion to appoint receiver and that there was a request for  
19 temporary restraining order filed by Galleria 2425 Owner,  
20 LLC. Do you recall that?

21 A Mr. Conrad, I don't remember the date. I do remember,  
22 at some point, I think Mr. Harrison filed that lawsuit; is  
23 that correct?

24 Q Do you remember appearing in that case? I didn't --  
25 let me strike that. Do you remember a lawsuit being filed

1 by Galleria 2425 seeking a temporary restraining order  
2 against the bank?

3 A If you can show it to me, that'd be helpful.

4 Q Okay. But you don't recall any discussions between you  
5 or anybody on behalf of the bank between the January,  
6 February, early March timeframe ever raising any concern  
7 about this alleged issue involving Paul Caldwell and the  
8 bank --

9 MR. BURKS: Objection.

10 BY MR. CONRAD:

11 Q -- prior to that lawsuit being filed?

12 MR. BURKS: Objection, Your Honor. So at this  
13 point, I think we've established that there's a dispute  
14 between the parties for the same reasons that I don't intend  
15 to try the suit today. And it sounds like we're beginning  
16 to try it. The other side dutifully objected. I've  
17 listened as long as I need to, to understand that there's a  
18 dispute between the parties. A substantial one.

19 THE COURT: I'll overrule the objection. Go  
20 ahead.

21 MR. CONRAD: Okay.

22 THE COURT: You can re-ask the question.

23 MR. CONRAD: Sure. I'll move on.

24 BY MR. CONRAD:

25 A So, in June of 2023, you were asked -- you were shown a

1 letter to you regarding documents being sent to you, or  
2 would be prepared to you, to your client, regarding the  
3 actual closing of July 3, 2023. Do you remember that  
4 document?

5 A I do.

6 Q Okay. The July 3, 2023 date is the date the state  
7 court gave the parties, your team, Choudhri, Galleria 2425  
8 or some other purchaser to actually close on that property  
9 by that date; is that true?

10 A It's around that time period. I don't remember the  
11 exact date. It was before the 4th of July.

12 Q Do you recall any evidence whatsoever of any entity,  
13 either Galleria 2425, or any other entity related to  
14 Choudhri or somebody on his behalf, tendering any type of  
15 payment whatsoever prior to July 3, 2023?

16 A Between June 28th and July 3.

17 Q Or any time before that, between April of 2023 through  
18 July 3, 2023?

19 A I mean, I certainly remember State Security Bank and  
20 trying to tender the information and the conversations we  
21 had with the bank and conversations about whether or not the  
22 Bank of Kuwait was going to extend the March 20th deadline  
23 to even accept any additional money from any of the  
24 signatories to the settlement agreement past March 20th,  
25 yes.

1 Q I want to show you what we're included on our exhibit  
2 list. I'm going to bring up 498-01. This is a transcript,  
3 but the hearing that we were talking about earlier, which  
4 involved the appointment of the receiver originally.

5 A Okay.

6 Q But prior to that, or just prior to that, the day  
7 before, there was a request for a temporary restraining  
8 order on a new lawsuit that was filed by the debtor here  
9 against the Bank of Kuwait. And specifically, I want you to  
10 go to the page where there was a representation made by you,  
11 Mr. Wetwiska, on behalf of the debtor, Galleria 2425, that  
12 stated that all you needed, or all your client needed, was  
13 extra time in order to consummate a deal of the settlement  
14 agreement. Do you recall making that statement?

15 A Can you -- I'm not sure. You asked me if the  
16 transcript --

17 Q I'm just asking if you recall making that  
18 representation to the court.

19 A Well, I remember telling the court that in order for  
20 there to be any ability for the transaction to be  
21 consummated, that additional time would be required. Right.

22 Q And this is after the 210 days under the settlement  
23 agreement had already expired on March 20th, correct?

24 A Correct.

25 Q And so between the time of March 20th and July -- I'm

1     sorry, April 12th, that's when the court granted your  
2     request to give additional time to the debtor to close and  
3     consummate the settlement agreement on or before July 3rd.  
4     Do you recall that?

5     A     So can you show me the exact ruling by the court?  Is  
6     it in the transcript?

7     Q     Sure.  You don't recall it from memory?

8     A     No.  I'm trying to remember exactly what the court's  
9     ruling was.  In fairness, I got this subpoena on Friday.  I  
10    did not go back and review all the records.  No one  
11    forwarded me the pleadings.

12    Q     Give me a second.

13    A     Sure.

14                 MR. CONRAD:  Your Honor, may I step away for just  
15    a second?

16                 THE COURT:  Sure.  Feel free.

17                 MR. CHOUDHURI:  How do I object?  Do I come up  
18    here?

19                 THE COURT:  If you want to object, you can object  
20    at any point in time, Mr. Choudhri.  Just come forward and  
21    object.

22                 MR. CHOUDHURI:  Okay.  Thank you  
23    (indiscernible) --

24                 THE COURT:  As long as you're by a microphone.  In  
25    other words, anything that you say is being electronically

1 recorded. If you're not by a microphone, we can't hear you.  
2 So just basically stand up and object.

3 MR. CHOUDHURI: Okay.

4 THE COURT: Okay.

5 MR. CHOUDHURI: Thank you.

6 THE COURT: All right.

7 MR. BURKS: Give him a mic. Right here, Ali.

8 MR. CONRAD: So if you'll scroll up, just for  
9 purposes of the record, this is again ECF 498-01. This is  
10 Page 72 of the hearing, and specifically it says here, the  
11 highlighted portion, beginning on Line 10:

12 "The Court: My inclination is to give you 60  
13 days, required payments of 80,"

14 THE WITNESS: Right.

15 MR. CONRAD: "And then with a foreclosure the  
16 first Tuesday of July, so that there's some money going to  
17 them. And it's a lot compared to what you owe. And if you  
18 don't get it done, well, then if you don't get it done, they  
19 foreclose, they're done. I don't see you again. You don't  
20 see each other again because you've said on the record as an  
21 officer of the court, that given more time, that if they  
22 can't get it done, then they can foreclose. I'm taking you  
23 at your word, Mr. Wetwiska."

24 Do you see that?

25 THE WITNESS: I do. I think what I'm telling the



1 court is we have a duty to mitigate under the law, as you're  
2 aware. And what we were trying to do is do everything  
3 possible to mitigate the damages that have been caused. And  
4 so part of that mitigation was trying to get additional time  
5 to pay the note. Of course, the Bank of Kuwait's position  
6 was, is that the note and agreement was no longer in effect.  
7 And that was the dispute during the spring and summer of  
8 2023. And that was the problem. It was trying to mitigate.  
9 And then we later went to mediation in July, I think, as  
10 part of that process also. I'm sorry. We went --

11 MR. CONRAD: (Indiscernible)

12 THE WITNESS: We went to mediation in June. I  
13 think we went to mediation like the second week of June,  
14 maybe.

15 BY MR. CONRAD:

16 Q Again, let me go back to my question.

17 A Sure.

18 Q The point is that the debtor here, nobody on behalf of  
19 the debtor ever tendered a full performance or offer by the  
20 July 3, 2023 deadline that's set by the court, true?

21 A I think it's true that after -- well, wait? I don't  
22 know. I don't remember the time of Security State Bank and  
23 those conversations. I don't remember if that was before or  
24 after April 12th. I don't know the answer to that. I mean,  
25 if you have a document, I'm happy to look at it. It was --

1 I suspect it was after April 12th, because the closing -- I  
2 mean, the first date was March 20th. I know the Security  
3 State Bank conversations were in April. I know you and I  
4 had conversations about whether or not the bank would even  
5 accept the payment. We had a number of calls. You and I  
6 had a lot of calls over a long time period. We got to know  
7 each other well. But we had a number of calls about that.  
8 And at some point, I think that I had asked you to just go  
9 to the bank to figure out if they were willing to give  
10 additional time or not. And I don't remember if the answer  
11 was before or after this hearing, but I think after the  
12 12th, there were additional conversations about Security  
13 State Bank and the bank providing financing. That's my  
14 recollection.

15 Q Are you speculating about that? Because you said you  
16 didn't remember.

17 A No, I'm telling you I'm not speculating. I wouldn't  
18 call it speculation. What I'm trying to do is that's the  
19 best of my recollection as to the time period.

20 Q Okay. You don't recall any of those conversations  
21 happening before April 12, 2023?

22 A I definitely think some of them happened before, for  
23 sure.

24 Q All right. Well, let's move on to let me show you  
25 what's been marked this Exhibit 499-41 on our exhibit list.

1 A All right.

2 Q Do you recognize this document or the title of the  
3 letterhead?

4 A Can you show me the document? Let me see who signed  
5 it. Okay. I am familiar with it, yes.

6 MR. CONRAD: Okay. We'd move to admit this  
7 document into evidence, Your Honor. This is ECF --

8 THE COURT: 499-41?

9 MR. CONRAD: Yes, Your Honor.

10 THE COURT: Any objection to 499-41, from any  
11 party?

12 MR. BURKS: None.

13 THE COURT: Mr. Choudhri?

14 MR. CHOUDHURI: No.

15 THE COURT: All right. Then it's admitted. Thank  
16 you.

17 (Trial Exhibit 499-41 entered into evidence)

18 MR. CONRAD: Thank you, Your Honor.

19 BY MR. CONRAD:

20 Q This is a letter, we'll scroll up real quick, dated  
21 June 28, 2023, correct?

22 A Correct.

23 Q This is a letter from you to me requesting information  
24 about agreements or draft agreements, also confirming the  
25 actual number. As far as what the payoff of the settlement

1 agreement is, true?

2 A True.

3 Q Were those documents provided to you?

4 A There was a -- they were provided to me in a fashion  
5 that said, in a form agreement that said, subject to further  
6 review or some type of further confirmation or approval by  
7 the bank. Like they were not in any type of final form, and  
8 they were subject to further approval.

9 Q But this document --

10 A I thought was very strange.

11 Q But this document contemplates that, again, it's making  
12 a confirmation of the settlement of payment agreement amount  
13 as extended by the state court judge on or before July 3,  
14 2023; is that correct?

15 A Well --

16 Q It says it in number one there.

17 A What I will say is this letter followed the mediation  
18 that we had on about June the 12th. And there were numerous  
19 offers made during the mediation. And at the mediation, the  
20 position was by the bank that payment could be made by July  
21 3, 2023. And so when you say extended by the court, my  
22 understanding was in sending this is that this was the offer  
23 that was made through the mediation process and that's why  
24 this was sent.

25 Q Where does it say that?

1 A Where does it say what?

2 Q What you just said. Where does this document in any  
3 place whatsoever say what you just said?

4 A What It says, July 3, 2024 --

5 MR. CHOUDHURI: Objection.

6 BY MR. CONRAD:

7 Q And that's the date that the court said -- we just  
8 looked at the transcript.

9 THE COURT: Hold on one second. Mr. Choudhri  
10 wants to object.

11 What do you want to object to, Mr. Choudhri?

12 MR. CHOUDHURI: Objection. It's optional  
13 completeness. There's a whole series of communications and  
14 attachments. He's just trying (indiscernible) to take it  
15 out, including the whole record that I'm looking at, Your  
16 Honor.

17 THE COURT: I'm going to overrule that objection.  
18 Go ahead.

19 MR. CONRAD: Sure.

20 BY MR. CONRAD:

21 Q I think again, where does it say anything about  
22 mediation offer extended? You know, we looked at the court  
23 transcript and set the date. They're extending the time for  
24 performance over NBK's objection to July 3, 2023. You know  
25 that, true?

1 MR. BURKS: Objection, argumentative.

2 THE COURT: I'll overrule that objection. I want  
3 an answer to the question. Thank you.

4 THE WITNESS: Absolutely. There's no question  
5 whatsoever with that the court gave us -- the court said you  
6 have until July 3rd to make the payment. The critical date  
7 was the -- when the sale would be, right? So the sale was  
8 going to be July 5th; is that right? Whatever the Tuesday  
9 was, it was going to be. Maybe the 4th of July was on a  
10 Tuesday, Your Honor. So the sale is always the first  
11 Tuesday of the month. So I think it got pushed back to the  
12 second Tuesday. There were issues. The issue with July 3rd  
13 was we were worried about bank holiday and trying to get the  
14 money in by July 3rd. What the mediation did is that the  
15 bank confirmed that they were willing to do this agreement.  
16 Because the whole point of (indiscernible) --

17 MR. CONRAD: Objection. Your Honor, I'm going to  
18 object as to nonresponsive to everything after he said yes  
19 to my question.

20 THE COURT: I'll sustain the objection. You're  
21 going to go back around, unfortunately. So you're going to  
22 be here for a while. Go ahead. Go ahead.

23 MR. CONRAD: I don't think I have any further  
24 questions, Your Honor.

25 THE COURT: Okay, then I'll go to Mr. Burks.

1           MR. BURKS: Your Honor, will you take judicial  
2 notice that July 4, 2023 was a Tuesday, the first Tuesday of  
3 the month of July?

4           THE COURT: I think I can take judicial notice of  
5 the calendar. Sure.

6                       REDIRECT EXAMINATION OF JIM WETWISKA

7 BY MR. BURKS:

8 Q       So this door is wide open. What happened?

9           MR. FITZMAURICE: Objection, Your Honor.

10          THE COURT: That asks for narrative. Be specific,  
11 Mr. Burks.

12 BY MR. BURKS:

13 Q       What happened in the time period of July 2, 3, 4, 5  
14 regarding the payments that you were trying to talk about  
15 and the counsel was asking about?

16 A       I'm trying to answer this, Your Honor, that doesn't  
17 disclose attorney-client communication, which is involved  
18 here. Is there -- can you --

19 Q       Sir --

20 A       In your question, I get it, can you try to do it in a  
21 way which maybe it doesn't require me to disclose attorney-  
22 client communications?

23 Q       Sure. There was the letter.

24 A       The June 28th letter.

25 Q       The June 28th letter.

1 A Correct.

2 Q There was a mediation, correct?

3 A There was a mediation on or about June 12th. Yes, it  
4 was a Zoom with Diana Marshall.

5 Q Pursuant to a letter, pursuant to the mediation, what  
6 did you try and get done as far as the payments?

7 A There were numerous conversations. As I understood it,  
8 the clients were in the process of discussing with numerous  
9 individuals.

10 Q Which clients?

11 MR. FITZMAURICE: Objection, hearsay as to those  
12 conversations, Your Honor.

13 THE COURT: I'll sustain the objection.

14 BY MR. BURKS:

15 Q You mentioned the bank, the name of the bank and the  
16 name of a finance unit. What was the name you mentioned?

17 A Security State Bank.

18 Q Did you speak with Security State Bank?

19 A Oh, yes.

20 Q All right, and so what was Security State -- what were  
21 you and Security State Bank trying to get done as far as  
22 making a payment?

23 MR. FITZMAURICE: Objection, Your Honor, this has  
24 all been asked and answered, but also hearsay as to comments  
25 by Security State Bank.



1           THE COURT: I'll overrule the objection. You can  
2 answer the question.

3           THE WITNESS: Trying to get financing put in place  
4 in order to make the \$26 million and change payment.

5 BY MR. BURKS:

6 Q And were you successful?

7 A No.

8 Q Why not?

9 A There were numerous reasons. The filing of the  
10 conservatorship/receivership was probably the biggest issue,  
11 in my view.

12 Q Who filed it?

13 A The Bank of Kuwait. So once that was filed, it  
14 essentially, from what I could tell, chilled the entire  
15 process.

16 Q Any other things that precluded the (indiscernible)  
17 with the bank?

18 A I can tell you what I observed.

19 Q Please, and only what you observed.

20 A Only what I observed. The other things that I observed  
21 were the article in the -- the May 2023 article in the  
22 DealBook about the foreclosure. I think that there was a  
23 foreclosure filed by the bank for June. I think after in  
24 May --I think sometime in May, they (indiscernible) --

25 MR. FITZMAURICE: So Your Honor, objection as to

1 filings that may or may not have happened. Again,  
2 there's -- if there are filings, there are records of those  
3 that the court should consider. Otherwise --

4 THE COURT: I'll sustain the objection as to  
5 anything that basically got filed that I haven't seen.

6 Go ahead, Mr. Burks.

7 BY MR. BURKS:

8 Q What else happened, in your opinion, to stop the deal  
9 for financing that you were working on in June, July 2023?

10 MR. FITZMAURICE: Objection, Your Honor, calls for  
11 speculation.

12 THE COURT: I'll sustain the objection.

13 BY MR. BURKS:

14 Q Do you have knowledge as to what happened? Were you  
15 involved in it?

16 MR. FITZMAURICE: Objection, vague as to what  
17 happened.

18 THE COURT: Be more specific, Mr. Burks.

19 BY MR. BURKS:

20 Q Were you working on getting financing approved and paid  
21 to National Bank of Kuwait in that time period between, say,  
22 July 1 through July 5 or 6, 2023.

23 A Mr. Burks?

24 Q Yes.

25 A I was trying to assist these clients during June, May,

1 April, March all the way up to the 1st of July, yes.

2 Q Okay. Were you successful?

3 A No.

4 Q Why not?

5 MR. FITZMAURICE: Objection, Your Honor, what  
6 happened --

7 MR. BURKS: It goes to weight.

8 THE COURT: Well, there's been an objection. But  
9 I don't know what he's objecting against. What's your  
10 objection based on?

11 MR. FITZMAURICE: The question is what happened,  
12 which calls for a narrative response by the witness as to  
13 events that we -- that we don't know whether he has any --  
14 he has personal knowledge of.

15 THE COURT: Yeah. I don't want to give a  
16 narrative. If you've got a specific question, Mr. Burks,  
17 ask that. I understand we're treading lightly. But you  
18 can't just ask him to give a narrative.

19 BY MR. BURKS:

20 Q Why were you not successful in March through July in  
21 getting the financing approved and paid to NBK?

22 MR. FITZMAURICE: Objection, Your Honor, calls for  
23 speculation, also mischaracterizes the evidence, lacks  
24 foundation that there was in fact the financing, that there  
25 was any effort to make a payment to the bank. None of that

1 is in evidence.

2 THE COURT: I'll sustain the objection.

3 BY MR. BURKS:

4 Q What was the name of the bank that you mentioned a  
5 moment ago?

6 A Security State Bank. That was one of a number of  
7 people that we had talked to.

8 Q All right. Whatever happened, because I may never get  
9 it in, whatever happened between March through July, do you  
10 believe, in your opinion as a lawyer working the case, that  
11 that is what has resulted in the dispute that is now before  
12 us in the adversary proceeding regarding the breach or non-  
13 breach of the settlement agreement?

14 MR. FITZMAURICE: So objection, Your Honor. Mr.  
15 Wetwiska's opinion on this matter is not relevant. It's  
16 Your Honor's determination. Also, the question specifically  
17 calls for the lawyer to testify about his legal work  
18 product, his legal analysis and attorney-client  
19 communications.

20 THE COURT: I'll sustain the objection.

21 MR. BURKS: Reese? Reese? Pull the complaint up,  
22 please.

23 MR. BAKER: The complaint?

24 MR. BURKS: The adversary complaint regarding  
25 (indiscernible).

1           May I have a moment, Your Honor, while it's  
2   getting pulled?

3           THE COURT:   Sure.

4   BY MR. BURKS:

5   Q    All right.  Did you see the first page of the complaint  
6   on the screen, sir?

7   A    I do, yes.

8   Q    And is this the same complaint you said that you had  
9   personal knowledge of?

10           MR. FITZMAURICE:  Objection, Your Honor.  This is  
11   a complaint filed in November of 2023.

12           THE WITNESS:  This isn't what I was shown earlier.

13           MR. BURKS:  Is that a different one  
14   (indiscernible).  Just a moment to confirm.

15           THE WITNESS:  Can you just go to the signature  
16   page?

17           THE COURT:  It's the wrong complaint.  It's not  
18   the one they want to ask you about.  It's the one that got  
19   removed to my court.

20           MR. BURKS:  Okay.  What number is this, Steve?

21           MR. SATHER:  Is it Exhibit 62 or docket?  I don't  
22   think it's Exhibit 62.

23           MR. BAKER:  All right.  What do you see after  
24   that?  You want (indiscernible) Number 10?

25           MR. BURKS:  I want the one based on the breach

1 (indiscernible) --

2 THE COURT: I think this is what you're looking  
3 for. Bear with me one second while I drag it over to where  
4 it needs to go. I think that's what you're making reference  
5 to.

6 MR. BURKS: Thank you, Judge.

7 THE COURT: Just tell me where you want to go.

8 MR. BURKS: I want to see these signature page for  
9 the witness to see.

10 THE COURT: We have the prayer. Where do you want  
11 to go?

12 MR. BURKS: I see the prayer.

13 THE COURT: It starts there and then it goes to  
14 (indiscernible).

15 BY MR. BURKS:

16 Q Sir, are you familiar with this lawsuit?

17 A I've seen it today, yes.

18 MR. BURKS: Despite my best efforts, I'm not going  
19 to be able to try this lawsuit today, Judge, nor do I have  
20 to, to support my motion. I have no further questions.

21 THE COURT: All right. Thank you. Then I'll go  
22 to Mr. Choudhri.

23 MR. TROOP: Your Honor, can I be excused for just  
24 a moment?

25 THE COURT: Sure. As soon as we're done with this

1 witness, we're going to take a break. I'm just trying to  
2 get him of here.

3 MR. TROOP: I just (indiscernible) --

4 THE COURT: That's fine. Go ahead. Feel free.

5 MR. CHOUDHURI: Thank you.

6 REDIRECT EXAMINATION OF JIM WETWISKA

7 BY MR. CHOUDHURI:

8 Q Mr. Wetwiska, Mr. Conrad put up some transcripts from a  
9 hearing from April 2023, right?

10 A Correct.

11 Q Do you remember there was also a hearing on June the  
12 12, 2023?

13 MR. CHOUDHURI: I can pull up the transcript if  
14 the court will permit me, Your Honor.

15 THE WITNESS: So there were a number of hearings  
16 we had and then maybe even a status conference. We did have  
17 some in June. I thought it was June the 5th  
18 (indiscernible).

19 MR. FITZMAURICE: Your Honor, for the record, what  
20 is the -- what exhibit is this in reference to?

21 THE COURT: I'm not sure what the exhibit. He  
22 hasn't told me. What's the ECF filing number? 90-3?

23 MR. CHOUDHURI: Yes, Your Honor.

24 THE COURT: I think that's either -- that is --  
25 yeah, 90-3 is the ECF number.

1           MR. CHOUDHURI: I'd like to enter this transcript  
2 from the state court, Your Honor. I move to admit this.

3           THE COURT: 90-3. Does anybody have any  
4 objections to the entry of 90-3?

5           Mr. Burks?

6           MR. BURKS: No objection, Your Honor.

7           THE COURT: Mr. Fitzmaurice, do you have time to  
8 look at it?

9           MR. FITZMAURICE: No. Thank you, Your Honor. No,  
10 no objection.

11          THE COURT: All right. Then it's admitted.

12          (Trial Exhibit 90-3 entered into evidence)

13 BY MR. CHOUDHURI:

14 Q       What is the date of this hearing, Mr. Wetwiska?

15 A       June 12th.

16 Q       And this is after the transcript that I think Mr.  
17 Conrad had put up earlier, correct? That was from April.

18 A       Almost two months later.

19 Q       Mr. Conrad took a position and represented to the court  
20 that the settlement agreement does not exist. Do you recall  
21 that?

22          MR. FITZMAURICE: Objection, Your Honor, lacks  
23 foundation.

24          THE COURT: I'll sustain the objection.

25 BY MR. CHOUDHURI:



1 Q Did the court foreclose the bank's breach of the  
2 settlement agreement at that hearing?

3 A No.

4 MR. FITZMAURICE: Objection, Your Honor, vague as  
5 to foreclose the bank's --

6 THE COURT: I need to know what you mean by that.  
7 You need to be more specific.

8 MR. CHOUDHURI: Yes, Your Honor.

9 BY MR. CHOUDHURI:

10 Q So let me back up. We had a settlement agreement,  
11 which is the settlement we're talking about in this case,  
12 August 2022.

13 A Correct.

14 Q And a payment date that was spelled out of the  
15 settlement agreement to being about 270 day, correct?

16 A March. It was March 2023.

17 Q Correct, and the issues that the debtor parties went to  
18 court for were the interferences or challenges of getting  
19 the bank paid.

20 MR. FITZMAURICE: Objection, Your Honor, leading  
21 as to interferences, challenges, getting the bank paid.

22 THE COURT: I'll sustain the objection. Thank  
23 you.

24 THE WITNESS: Can you show me 59 of this exhibit,  
25 just the bottom of it? Can you go to the next page? Okay.

1 BY MR. CHOUDHURI:

2 Q Do you recall Mr. Conrad representing to the court  
3 numerous times at this hearing that the settlement agreement  
4 did not exist?

5 MR. FITZMAURICE: Objection, Your Honor.

6 THE WITNESS: Yes. Sorry.

7 THE COURT: Go ahead, make your objection.

8 MR. CHOUDHURI: What's the objection?

9 MR. FITZMAURICE: The document speaks for itself.  
10 Also mischaracterizes the nature of the document, the legal  
11 argument that was made at a hearing in open court.

12 THE COURT: I'll sustain the objection. Thank  
13 you.

14 BY MR. CHOUDHURI:

15 Q I'd like to show you a document, Mr. Wetwiska. So just  
16 to get the timeline right, at this hearing that you were  
17 president on June the 12th, Mr. Conrad takes the position  
18 that the settlement agreement doesn't -- or maybe we could  
19 go to the transcript, or the transcript is submitted in the  
20 record. But the dispute was, did the settlement agreement  
21 exist or not? Your position to the court was it did. Mr.  
22 Conrad's position was it denied. Do you recall that?

23 MR. FITZMAURICE: Objection, Your Honor, lacks  
24 foundation.

25 THE COURT: I'll sustain the objection. And I'm

1 happy to read the transcript. And we'll read it, Mr.  
2 Choudhri.

3 MR. CHOUDHURI: Thank you.

4 THE COURT: Thank you.

5 BY MR. CHOUDHURI:

6 Q Do you recall that Mr. Russell Ingram from CBRE came to  
7 the hearing?

8 MR. FITZMAURICE: Objection, Your Honor,  
9 relevance.

10 THE COURT: I'll sustain the objection. I don't  
11 understand what the relevance is.

12 MR. CHOUDHURI: There was a buyer with a contract,  
13 irrevocable contract, that was wanting to close as long as  
14 the bank would honor the agreement.

15 THE COURT: If there is, I'm happy to hear that  
16 testimony and see that document. Okay. Thank you.

17 MR. CHOUDHURI: Should I pull up that contract?

18 THE COURT: I don't know if you get it in through  
19 this witness, unfortunately. But you can do whatever you  
20 want to, Mr. Choudhri. You represent yourself.

21 BY MR. CHOUDHURI:

22 Q Okay. Mr. Wetwiska, is this an email you received from  
23 Mr. Conrad on June 29 at 5:42 p.m.?

24 A It is, sir. Yes.

25 Q And earlier we had talked about there was a lot of oral

1     communications, verbal communications. But then you wanted  
2     to start putting things in writing. Do you recall that?

3     A     I think Mr. Conrad wanted things in writing. And I  
4     think I wanted things in writing. It had become contentious  
5     over the -- between May and the end of June.

6     Q     And in this email here, this was the first time ever  
7     that you received a draft set of loan sale documents with an  
8     assignment of the tax liens and a purchase sale agreement  
9     and with a caveat that these are not final. These are not  
10    the final documents.

11           MR. FITZMAURICE: So Your Honor, objection as  
12    leading and lacks foundation. We will stipulate to the  
13    admissibility of the email, if that's where Mr. Choudhri is  
14    trying to do. But I think he's --

15           THE COURT: Okay. I'll take the stipulation.  
16    I'll admit Exhibit 90-8. I'll sustain the objection  
17    otherwise.

18           (Trial Exhibit 90-8 entered into evidence)

19    BY MR. CHOUDHURI:

20    Q     So Mr. Wetwiska, the first time the bank ever provided  
21    anything close -- let me back up.

22           MR. CHOUDHURI: Let me move around that question  
23    and ask it a better way, Your Honor.

24    BY MR. CHOUDHURI:

25    Q     I think we've established that you asked for a loan

1 sale agreement from Mr. Conrad around March, before the  
2 expiration of the payment date, correct?

3 MR. FITZMAURICE: Objection, Your Honor, assumes  
4 facts not in evidence.

5 THE COURT: I'll sustain the objection. That's  
6 not my recollection of the testimony.

7 BY MR. CHOUDHURI:

8 Q Did you ask for the loan sale agreement before the  
9 expiration of the payment date in the settlement agreement?

10 A Before March 20, yes.

11 Q You did, right?

12 A Yes.

13 Q And how did you ask?

14 A I asked Mr. Conrad. I told him we're getting close to  
15 March 20. There was this issue with Mr. Caldwell. We're  
16 getting down to the wire. I need to see the documents and  
17 we're trying to see if we can get something done by the  
18 20th.

19 MR. FITZMAURICE: So just, Your Honor, objection  
20 as to hearsay with respect to Mr. Caldwell, but --

21 THE COURT: I'll sustain the objection as to  
22 hearsay as to that part of the answer.

23 BY MR. CHOUDHURI:

24 Q I just want the record to be clear. So the request for  
25 loan sale agreement was made before the expiration that was

1     stated in the settlement agreement, correct?

2     A     Before March 20, yes.

3     Q     Okay, and so the first time that you ever got a loan  
4     sale agreement was this email we're looking at today that's  
5     been stipulated, which is document 90-8, right?

6     A     I don't remember seeing them before this date.

7     Q     This is basically one business day before the  
8     foreclosure, the scheduled foreclosure sale, correct?

9             MR. FITZMAURICE:  Objection, Your Honor.

10            THE WITNESS:  Actually two.

11            MR. FITZMAURICE:  Your Honor can take judicial  
12     notice of the calendar, but we've got a Friday and a Monday  
13     and the foreclosure is on a Wednesday.

14            THE COURT:  Yeah.  I'll sustain the objection  
15     (indiscernible) --

16     BY MR. CHOUDHURI:

17     Q     Was Monday, July the 3rd, a holiday?

18            THE COURT:  I think we answered that before, Mr.  
19     Choudhri.  Yes.

20     BY MR. CHOUDHURI:

21     Q     So this is an email that you received at 5:42 p.m.

22            MR. TROOP:  Objection.

23            MR. FITZMAURICE:  Objection.  I mean, Your Honor,  
24     again, Your Honor can take judicial notice that Monday, July  
25     3rd is not a holiday.

1 THE COURT: Yes. That's not a holiday.

2 BY MR. CHOUDHURI:

3 Q Are you aware if the banks were closed on July the 3rd?

4 MR. FITZMAURICE: Objection, Your Honor.

5 THE COURT: I don't have personal knowledge of  
6 that. I'll sustain the objection.

7 THE WITNESS: I don't know.

8 BY MR. CHOUDHURI:

9 Q And when you received this email, this was not the  
10 final approved loan sale agreement by the Bank of Kuwait,  
11 true or false?

12 MR. FITZMAURICE: Objection. Objection, Your  
13 Honor, leading.

14 THE COURT: I'll sustain the objection.

15 BY MR. CHOUDHURI:

16 Q Could you read me the last sentence on the email?

17 A These drafts remain subject to NBK's review and  
18 comment.

19 Q Do you know who Romston is?

20 A (indiscernible) yeah, I do.

21 Q Is this another lender that was willing to do the loan  
22 to fund the loan purchase?

23 MR. FITZMAURICE: Objection, Your Honor, leading  
24 as to another, also relevance. There's no evidence, and  
25 lacks foundation. The issue is whether, again, the bank

1     should be allowed to credit bid tomorrow.  There's no  
2     evidence that National Bank of Kuwait had any awareness,  
3     knowledge of who these folks are, or that there was any  
4     communication with the bank so that it would actually be  
5     relevant to the bank's conduct necessary for the credit  
6     bidding motion.

7                 THE COURT:  I'll sustain the objection.  Go ahead,  
8     sir.

9                 MR. CHOUDHURI:  Your Honor, what I'm trying to  
10    establish is --

11                THE COURT:  I've ruled on the objection.  You may  
12    ask another question.  Please go ahead.

13    BY MR. CHOUDHURI:

14    Q     Mr. Wetwiska, how is it possible or commercially  
15    feasible for a transaction to take place without the  
16    operative document --

17                MR. FITZMAURICE:  Objection, Your Honor.

18                MR. CHOUDHURI:  Let me back up.  That's a bad  
19    question.

20    BY MR. CHOUDHURI:

21    Q     Mr. Wetwiska, you've been involved in a lot of  
22    closings, right?

23    A     I guess.

24                MR. FITZMAURICE:  Objection, Your Honor -- well,  
25    go ahead.  I'm sorry.  I'll withdraw.



1                   THE COURT: Go ahead. Go ahead. Ask the next  
2 question.

3 BY MR. CHOUDHURI:

4 Q You're a senior partner at Akin Gump, correct? You've  
5 been at Akin Gump how long?

6 A Twenty years.

7 Q And you've been involved in a lot of transactions?

8 A Both as a lawyer, as an individual, as an investor,  
9 yes.

10 Q In fact, you personally have your personal investments  
11 and lots of transactions like (indiscernible) --

12                   MR. FITZMAURICE: Objection, Your Honor,  
13 relevance.

14                   THE COURT: I'll sustain the objection as to  
15 relevance.

16 BY MR. CHOUDHURI:

17 Q You have personal experience in business, in investing  
18 and transacting?

19                   MR. FITZMAURICE: Objection, Your Honor,  
20 relevance. Mr. Wetwiska is not here as an expert on real  
21 estate closing.

22                   THE COURT: I'll sustain the objection as to  
23 relevance. And again, Mr. Choudhri, I'm going to warn you.  
24 You need to ask questions that the witness can actually  
25 answer.

1 BY MR. CHOUDHURI:

2 Q Mr. Wetwiska, is this an email that you received?

3 MR. FITZMAURICE: So objection, Your Honor, lacks  
4 foundation. Mr. Wetwiska isn't anywhere on this email.

5 MR. CHOUDHURI: Yes, he is.

6 THE COURT: I see the top line. Go ahead.

7 MR. FITZMAURICE: I thought he meant this one down  
8 here..

9 THE WITNESS: I received it a couple of times.

10 THE COURT: You weren't a party to the original  
11 email? It was simply forwarded to you?

12 THE WITNESS: The original email was either  
13 forwarded to me or shown to me.

14 THE COURT: Okay. That's fine.

15 THE WITNESS: And then for some reason, and I  
16 don't know why, this looks like it was sent to me in April  
17 of this year, but I don't know why he would have sent it to  
18 me.

19 THE COURT: Okay. Go ahead.

20 BY MR. CHOUDHURI:

21 Q Mr. Wetwiska, would you just read into the record what  
22 the email from Mr. (indiscernible) at Romston states? Or  
23 would you read in the record what is on the subject of the  
24 email?

25 A The subject?

1 Q Yes, sir.

2 A Re Galleria 2425 v. National Bank of Kuwait

3 (indiscernible).

4 Q And what does the email say, starting from how.

5 A How do they expect you to close on July 3 if they  
6 haven't produced a sale agreement? We'll look out for the  
7 documentation. Do you want me to continue?

8 MR. FITZMAURICE: Your Honor, I don't -- so  
9 objection, Your Honor. The email, the underlying email, not  
10 the forwarded to Mr. Wetwiska --

11 THE COURT: It's not in evidence.

12 MR. FITZMAURICE: It's not in evidence.

13 THE COURT: I'll sustain the objection.

14 MR. CHOUDHURI: I'd like to move this email, Your  
15 Honor.

16 THE COURT: It's not admissible through this  
17 witness.

18 BY MR. CHOUDHURI:

19 Q Is there any possibility of buying the loan under the  
20 confidential settlement without a loan sale agreement, Mr.  
21 Wetwiska, if you know?

22 MR. FITZMAURICE: Objection, Your Honor. That  
23 agreement speaks for itself and also calls for speculation.

24 THE COURT: Calls for a legal conclusion. I'll  
25 sustain the objection.

1 BY MR. FITZMAURICE:

2 Q So Mr. Wetwiska, you're aware that at least two lending  
3 institutions that require a loan sale agreement before they  
4 move forward to fund the transaction, correct?

5 MR. FITZMAURICE: Objection, Your Honor, lacks  
6 foundation and also relevance to the issue of whether or not  
7 the bank can credit bid tomorrow.

8 THE COURT: I'll sustain the objection as to lack  
9 of foundation. Go ahead, ask the next question.

10 BY MR. CHOUDHURI:

11 Q If the bank is acting in bad faith and preventing  
12 performance, do you believe they should be able to credit  
13 bid?

14 MR. FITZMAURICE: So objection, Your Honor,  
15 relevance, calls for a legal conclusion.

16 THE COURT: I'll sustain it on both of those  
17 grounds. Thank you.

18 BY MR. CHOUDHURI:

19 Q Mr. Wetwiska, are you aware of the bank telling the  
20 buyers that were calling the trustee that there will be a  
21 foreclosure in the future and Judge Weems admonished them  
22 for doing so? Do you recall it? That's a bad question.  
23 I'm sorry. Do you recall going to a hearing in front of  
24 Judge Weems where Judge Weems admonished NBK for after they  
25 passed the sale, for telling the people calling the bank

1     why?

2                   MR. FITZMAURICE:   Your Honor, lacks foundation.

3     If there is such a hearing, then there will be a transcript  
4     and we can look at that.

5                   THE COURT:   I'll sustain the objection.

6                   Mr. Choudhri, you basically have gotten to the  
7     point where you're really trying my patience.  You have two  
8     more questions.  And if they're both overruled on  
9     objections, you're done.

10    BY MR. CHOUDHURI:

11    Q     Did you come to find out that Paul Caldwell was in  
12    communication with Pillsbury?

13                   MR. FITZMAURICE:   Objection, Your Honor, hearsay  
14    as to Mr. Caldwell.

15                   THE COURT:   I'll sustain the objection as to  
16    hearsay.

17                   Mr. Choudhri, you on your last question.

18    BY MR. CHOUDHURI:

19    Q     Was there an email forwarded to you?  I believe it's  
20    one of the exhibits, if we can pull it up.  Can you tell us  
21    the situation or the circumstance in your conversation with  
22    Mr. Conrad relating to Paul Caldwell?

23                   MR. FITZMAURICE:   Your Honor, I don't --

24                   THE COURT:   I don't understand the question  
25    either.

1 MR. FITZMAURICE: Yeah.

2 THE COURT: Rephrase it, please.

3 BY MR. CHOUDHURI:

4 Q Did Mr. Conrad contact you and said he has received a  
5 request for a payoff from Paul Caldwell?

6 MR. FITZMAURICE: Objection, Your Honor, again,  
7 best evidence rule. If there is correspondence related to  
8 this, it would be in an email.

9 THE COURT: I'll sustain the objection.

10 One more question, Mr. Choudhri.

11 MR. CHOUDHURI: I'm done, Your Honor. I do not  
12 have any (indiscernible) --

13 THE COURT: Okay. Thank you. All right.

14 Let's go to Mr. Fitzmaurice. Do you have  
15 questions for this witness?

16 MR. FITZMAURICE: I think Mr. Conrad does, Your  
17 Honor.

18 MR. CONRAD: Just real quick cleanup on two  
19 issues.

20 THE COURT: Sure. Go ahead.

21 MR. FITZMAURICE: And again, Your Honor, I'll  
22 present from here.

23 THE COURT: That's fine.

24 MR. FITZMAURICE: Thank you.

25 MR. CONRAD: Just quickly, there was an exhibit

1     that we had listed on our exhibit list that I forgot to be  
2     admitted into the record. This is ECF 498-01. This is the  
3     transcript from the April 12, 2023 hearing that we looked at  
4     earlier. I'd move to admit it.

5             THE COURT: Are there any objections to ECF 498-01  
6     being admitted?

7             MR. BURKS: No, Your Honor.

8             THE COURT: Mr. Choudhri?

9             MR. CHOUDHURI: Which is the exhibit on this?  
10    Which one? This one?

11            THE COURT: April 12th hearing date transcript.

12            MR. CHOUDHURI: No. No.

13            THE COURT: It's admitted. Thank you.

14            (Trial Exhibit 498-01 entered into evidence)

15            MR. CONRAD: Thank you, Your Honor. I'm going to  
16    turn to the settlement quickly, and this is ECF 508-7. And  
17    looking specifically, if you'll zoom out a little bit just  
18    to get an idea what page this is. This is Page 5 of the  
19    settlement agreement. Scroll up if you will. And this is  
20    subsection settlement payment.

21                    RE CROSS-EXAMINATION OF JIM WETWISKA

22    BY MR. CONRAD:

23    Q     Do you see there D?

24    A     Yes.

25    Q     I think some of your testimony earlier today, Mr.

1     Wetwiska, was is the bank had an obligation to produce or  
2     provide closing documents associated with the purchase or  
3     sale. Do you recall that testimony that you gave earlier  
4     or, correct me if that's wrong or not.

5     A     I think what I was saying is that you had to have  
6     documents, those documents to consummate it and the bank  
7     somewhere in here I thought had agreed to work with and  
8     provide information that's required to do that.

9     A     So I want -- but you don't recall off the top of your  
10    head, do you?

11   A     I did not review this before today.

12   Q     Fair enough. And so looking at here, this is under --  
13   I'm sorry. I said D. I meant H. This is under the  
14   purchase option section. If you look at the last sentence  
15   of that paragraph of that section where it says, upon  
16   written request of a purchase option party, do you see that?

17   A     Yes.

18   Q     It says, NBK shall provide such purchase option party  
19   with a payoff statement for the satisfaction or purchase of  
20   its loan and loan documents. Do you see that?

21   A     Right.

22   Q     We've looked at your exhibit, your letter from June  
23   28th where you're requesting that the bank provide  
24   documents. Do you remember looking at that letter that you  
25   sent?



1 A Right.

2 Q We looked at an email correspondence where those  
3 documents were sent to you --

4 A Correct.

5 Q -- within 24 hours of your letter, if you look at the  
6 emails.

7 A Right.

8 MR. CONRAD: Nothing further, Your Honor.

9 THE COURT: Thank you.

10 Mr. Burks?

11 MR. BURKS: Two questions.

12 REDIRECT EXAMINATION OF JIM WETWISKA

13 BY MR. BURKS:

14 Q Let's just continue on the question about the --

15 A You guys should have called me first.

16 Q The document -- so my question is, but the documents  
17 stated that the loan documents provided were subject to  
18 approval, were not in the final form, correct?

19 A I don't -- it speaks -- it says what it says. I think  
20 they reserved the right to further review and consent, or  
21 something along those lines.

22 Q When did you receive an email, mail or otherwise of  
23 final loan closing documents? Did you ever?

24 A No.

25 MR. BURKS: Nothing further.

1 THE COURT: Thank you.

2 Mr. Choudhri, do you have any questions to this  
3 witness, Mr. Choudhri? You're limited to redirect what's  
4 just been asked in the two previous parties.

5 MR. CHOUDHURI: No, Your Honor.

6 THE COURT: All right. Mr. Conrad?

7 MR. CONRAD: Nothing further Your Honor.

8 THE COURT: I'm going to let you go, sir. Thank  
9 you for coming.

10 MR. WETWISKA: Your Honor, nice to meet you.

11 THE COURT: Nice to meet you, sir.

12 MR. WETWISKA: Thank you.

13 THE COURT: Good luck to you.

14 MR. WETWISKA: Thank you.

15 THE COURT: All right. It's time now to take a  
16 break. It's overdue. How long do the parties want to break  
17 for? You haven't eaten anything. You haven't had a drink.  
18 What do you want to do? We're going to stay here until we  
19 get finished with this motion. So how long? It's just your  
20 time. So you can decide what you want to do.

21 Mr. Burks, how long do you want?

22 MR. BURKS: I want to get a Starbucks iced tea and  
23 a sandwich. If that takes about an hour and a quarter,  
24 that's how much time I'd like. I don't know where Starbucks  
25 is. Is it in the tunnel?

1 THE COURT: There is one directly across the  
2 street. It should take you about 45 minutes to do both  
3 those things. Okay. You okay with a 45-minute break?

4 MR. FITZMAURICE: Your Honor, we'd like it to be  
5 less. As much as we love the court's company, we'd rather  
6 not be here until 2:00 a.m. if we don't have to be.

7 THE COURT: That's my preference as well. But I  
8 need to be in a position to give you a written ruling on  
9 this motion, and so I can tell you what's going to happen.  
10 You guys are going to finish and then I'm going to send you  
11 home because I need to now read everything you've put into  
12 evidence and give you a written ruling before 1:00 p.m.  
13 tomorrow. And you're going to be back here on the 3rd.  
14 Okay?

15 So how long do you want, Mr. Burks?

16 MR. BURKS: Forty-five minutes. I'll test -- I'll  
17 test (indiscernible) --

18 THE COURT: Okay. I'll give you a few minutes.  
19 I'm going to speed things along. It is 2:20 according to my  
20 Apple watch, which always has the right time. We will  
21 resume at 3:00 p.m. Thank you.

22 MR. FITZMAURICE: Thank you, Your Honor.

23 CLERK: All rise.

24 (Recess)

25 CLERK: All rise.

1 THE COURT: Please be seated.

2 Mr. Murray, did you have something to say?

3 MR. MURRAY: Yeah, a short housekeeping matter. I  
4 didn't want to interrupt the evidence. You had mentioned --  
5 I don't know if I could start now or --

6 THE COURT: Go ahead.

7 MR. MURRAY: The court talked about scheduling  
8 when you might issue an order in advance of 1:00 tomorrow so  
9 that that would not delay the auction. It's still my  
10 intention to have an auction at 1:00. I might however delay  
11 it, the reason for that being we got a conforming bid where  
12 the escrow money wasn't provided, but they said it was going  
13 to be. I wanted to wait a little bit of time to see if it  
14 comes in today and, if it does, they'd have more bidders at  
15 the auction. And I think I have discretion under the rules  
16 to extend the auction. But I didn't want --

17 THE COURT: I just want to rule on the credit bid  
18 motion before 1:00 p.m. tomorrow so you know what's going on  
19 there.

20 MR. MURRAY: Okay, I appreciate it. I just wanted  
21 the court to know that.

22 THE COURT: And when everyone gets here, I will  
23 tell you that on the 3rd, basically the courthouse will be  
24 closed. You will have to enter through the entrance is to  
25 the far left where the call box is. They know you're

1 coming. You'll have to hit the button. Call, they'll let  
2 you in to come up. Okay.

3 MR. MURRAY: Thank you.

4 MR. BURKS: Thank you, Your Honor.

5 MR. FITZMAURICE: On the 19th.

6 MR. TROOP: Judge, you said the 3rd. Did you mean  
7 the 19th?

8 THE COURT: The 19th. I'm sorry. yeah. I  
9 apologize. I don't know why I'm saying the 3rd. I think  
10 it's because we filed on July 3rd (indiscernible) --

11 MR. FITZMAURICE: We filed it as of July 3rd this  
12 morning. Yeah.

13 THE COURT: Yeah.

14 Mr. Burks, do you have your next witness?

15 MR. BURKS: He's not in the courtroom. I'll call  
16 him.

17 THE COURT: You can call Mr. Murray.

18 MR. BURKS: Mr. who? Mr. Murray. Yes.

19 THE COURT: Okay.

20 MR. BURKS: I thought he was there.

21 THE COURT: You were looking at him. I was  
22 assuming that's who you were going to call.

23 Mr. Murray, come up and I'll swear you in. Please  
24 raise your right hand. Do you swear or affirm to tell the  
25 truth, the whole truth and nothing but the truth, so help

1     you God?

2                   MR. MURRAY:   I do.

3                   THE COURT:   All right.   Please be seated.

4                   MR. MURRAY:   May I take a water with me?

5                   THE COURT:   You may.

6                   DIRECT EXAMINATION OF CHRISTOPHER MURRAY

7     BY MR. BURKS:

8     Q     Please state your name for the record.

9     A     Christopher Murray.

10    Q     And in connection with this case, do you serve in any  
11    capacity?

12    A     I'm the Chapter 11 trustee.

13    Q     Are you also an attorney?

14    A     Yes.

15    Q     Boom.   When did you assume the position of Chapter 11  
16    trustee in this case?

17    A     Early February.

18    Q     Of 2024?

19    A     Yes.

20    Q     All right, and have you seen the motion for sale and  
21    have you seen the plan?   I'll do them one at a time.   Who  
22    filed the motion which resulted in (indiscernible) auction  
23    (indiscernible)?

24    A     I believe I filed a motion to authorize bidding  
25    procedures and that's what was approved.

1 Q All right, and in the bidding procedures, was there  
2 provision for credit bidding by National Bank of Kuwait?

3 A Yes.

4 Q And may I refer to National Bank of Kuwait as NBK or  
5 National Bank of Kuwait?

6 A That's fine with me.

7 Q Thank you, and was that something that you originally  
8 drafted or was that something that NBK asked you to put in  
9 later?

10 A It said we drafted it together. I think the first  
11 draft came from that.

12 Q So the first draft of the bidding procedures came from  
13 the bank's attorney?

14 A I believe that's right, yes.

15 Q All right, and when you saw the credit bid provision,  
16 did you have any comments on it?

17 A Nothing specific comes to mind.

18 Q All right. On the bidding procedures, did you -- were  
19 you able to quickly accept those procedures, or did you have  
20 a draft of your own (indiscernible) your attorneys?

21 A I believe we provided rounds of comments, but starting  
22 with NBK's draft. I don't think we had our own draft.

23 Q Okay, and starting with NBK's draft, there wasn't a  
24 prior draft before theirs, was there?

25 A Not that I recall.

1 Q Okay, and who signed off on the bidding procedure? Did  
2 you sign off on it?

3 A I did, yes. Well, ultimately, Judge Norman signed off  
4 on it, but --

5 Q Sure. But what was proposed to the court, you signed  
6 off on it?

7 A Yes.

8 Q And at what time of the case was this? Was this -- in  
9 what period were you drafting this motion? January,  
10 February, March?

11 A Well, I was appointed in February. It wasn't  
12 immediately. So it would have been March or April.

13 Q Okay.

14 A And the document itself has a timestamp.

15 Q Sure. Sure. Well, I'm actually going into your  
16 thought processes as to what's happening here. Did you ever  
17 question why the bank wanted to credit bid?

18 A No.

19 Q Did you ever analyze or ask the bank if there was any  
20 procedure they'd agreed to other than credit bid?

21 A Yes.

22 Q And what did you ask them?

23 A I asked them if they would be willing to put a cap on  
24 the amount of their credit bid.

25 Q And what cap did you ask them?



1     A     I asked them conceptually, and they said no, there  
2     wasn't a number.

3     Q     Okay. Now, this was done before all the litigation  
4     that is now on file was on file; is that correct?

5     A     I don't know what you're referring to.

6     Q     Fair enough. Was there a time where Ali Choudhri or  
7     anybody else post-bankruptcy brought you leases, potential  
8     leases for the building?

9     A     There were documents presented to me that were called  
10    leases.

11    Q     Okay, and what did you do with those?

12    A     I reviewed them with my counsel.

13    Q     All right. Did you bring those to the bank?

14    A     I don't know if -- I don't know if lawyers shared those  
15    leases. I did not ask the bank to approve any of them.

16    Q     Did you ask the bank's lawyers to review them?

17    A     Personally? I don't recall. I don't know if I did  
18    that.

19    Q     Do you know if your lawyers spoke to the bank's  
20    lawyers?

21    A     I know they spoke to them all the time. I don't know  
22    if they presented leases.

23    Q     All right, and so you made a decision not to present  
24    these documents that you said represented leases; is that  
25    correct?

1 A Yes.

2 Q On the leases, are you aware whether or not a tenant  
3 requires anything from the National Bank of Kuwait in order  
4 execute a lease?

5 A Just leases generally, or are you referring to one in  
6 particular?

7 Q Leases generally. Do they need --

8 A I don't know.

9 Q -- do they need anything from the lender in order to  
10 sign a business lease in a corporate (indiscernible) --

11 A Yeah, lots of things.

12 Q Yeah. They need it from the lender, don't they?

13 A Yeah.

14 Q Okay. So why did you not present any of these leases  
15 to the lender's attorneys or to the lender?

16 A Well, before I get the bank to sign off on the lease, I  
17 have to think it's in the estate's best interest, and none  
18 of them were.

19 Q All right, and generally -- we'll go specifically or  
20 someone else will. Generally, why did you determine that  
21 executing those leases was not an the bank's best -- excuse  
22 me, the estate's best interest, or let me rephrase the  
23 question. Why did you determine that it wasn't even in the  
24 estate's best interest to forward these documents, whatever  
25 they are, to Bank of Kuwait?

1 A I don't think I made that determination. But what you  
2 asked -- I want to answer your question. What are you  
3 asking, sir?

4 Q Sure. You reviewed documents that you say purported to  
5 be leases, correct?

6 A Yes.

7 Q You stated you did not forward them to the National  
8 Bank of Kuwait, either to the bank or to their attorneys.

9 A I said I do not remember personally sending it to the  
10 bank. I know my attorneys were talking to the bank's  
11 attorneys all the time. Lots of documents were exchanged.  
12 I don't know if they were exchanged in the process.

13 Q Did you ask your attorneys to send these leases ahead  
14 to the bank's attorneys?

15 A No, I don't remember doing that.

16 Q All right. So why did you not ask your attorneys to  
17 forward the leases ahead to the bank's attorneys or to the  
18 bank?

19 A I wasn't -- I had not determined that they were worth  
20 the estate pursuing. So why would I waste time asking the  
21 bank's consent to do something I didn't want to do?

22 Q And in deciding not to do that, how did you determine  
23 that? Did you speak to any of the potential tenants or just  
24 to Mr. Choudhri?

25 A I spoke to one of the potential tenants.

1 Q Oh, good. And who did you speak with -- excuse me.

2 I'll state it again. Good. With whom did you speak?

3 A I spoke to Faisal Shah.

4 Q Faisal Shah. And that was for a potential lease of  
5 what?

6 A I think the company was called Vaxanix. He said that  
7 he represented that company in some capacity and we spoke  
8 briefly about a potential proposal of a lease. But I never  
9 heard from him again on that.

10 Q All right. Do you recall any of the others? I think  
11 there were -- I'm not going to put words in your mouth. Do  
12 you recall any of the others that were presented to you by  
13 Ali or someone on behalf of Ali with post-petition leases?

14 A I think Ali presented one other potential lease from a  
15 shipping company. But I never heard from that company or  
16 any of its representatives.

17 Q Did you contact them?

18 A No.

19 Q Okay. So were there any other lease or lease options  
20 or occupancy documents that Ali or someone on behalf of Ali  
21 sent to you?

22 A Not that I recall. I mean, the ones I'm talking about  
23 are two documents that said lease on the top and looked kind  
24 of like leases. At various times, Ali would say and propose  
25 different things about -- I'm sorry, I mean, Mr. Choudhri,

1 I'm not trying to be disrespectful -- that I do not think  
2 rise to the level of a lease, but maybe indicated someone  
3 might be interested in leasing space.

4 Q In addition to those two?

5 A Yeah. I can't think of anyone in particular.

6 Q All right. But he never gave you -- did he ever give  
7 you names or contacts?

8 A I think at different times he gave some names, yes.

9 Q All right, and did you contact those people?

10 A No.

11 Q What approach did you take from the time you took on  
12 the Chapter 11 trusteeship, what efforts did you take to  
13 market leases on this property?

14 A I interviewed two different real estate companies with  
15 experience in that field to explore the possibility of  
16 marketing the building.

17 Q All right, and what was the result of that? Did you  
18 say you had one conversation with each realtor or --

19 A It was multiple conversations. I didn't keep track of  
20 the number with which ones.

21 Q And what came of those conversations in general?

22 A I decided which one to propose to hire to sell the  
23 building.

24 Q In the interim, did you -- of selling the building, did  
25 you discuss with any realtors actively pursuing leases on

1 the building?

2 A Yes.

3 Q And with whom did you contact?

4 A The two were Hilco, who I ultimately hired, and JLL,  
5 which the bank had originally proposed as the broker.

6 Q Did you get any of the leases post-petition into the  
7 building?

8 A No.

9 Q Why not?

10 A I didn't seek any new ones.

11 Q Oh? Why not?

12 A Well, since you asked, both of the realtors I spoke to  
13 said it would be nonsensical to try to sign up new leases  
14 for several reasons, the first of which was the building had  
15 a reputation, is the term they used. They said no serious  
16 creditworthy tenant would sign a significant lease with the  
17 building knowing who its management was. That was one  
18 thing.

19 Q All right.

20 A The second thing was they didn't like a particular  
21 tenant in the building, that being the Jetall companies.  
22 That company also had a reputation. And nobody would lease  
23 space in a building where they were a tenant. That's what  
24 two different companies told me.

25 Q All right.

1     A     They also said it was known that the company's owner  
2     was in bankruptcy and that no serious tenant would ever  
3     propose a meaningful, economically valuable long-term lease  
4     with a company whose owner might change at any moment. They  
5     would want to know who the buyer is. They would want to  
6     know the result of the bankruptcy before signing a lease.  
7     Their advice to me was that it was not realistic that a  
8     serious person would propose a lease, and I shouldn't waste  
9     my time looking at proposed leases like that. More reasons,  
10    since you asked.

11    Q     Sure. I did.

12    A     It was explained to me that any time you sign a long-  
13    term commercial lease, there is a broker payment that is due  
14    to whoever brought the lease to you. It was explained to me  
15    by those two companies that you have to pay. The landlord  
16    has to pay cash to the broker at the beginning of the lease.  
17    I don't have any cash. I have very limited cash in this  
18    estate, so I'm not in a position to do that. I asked for  
19    information on those leases as to who the broker was and  
20    what they would get paid. Never got an answer. But I do  
21    know that there were other leases that the debtor had, or  
22    which Jetall companies and other related entities are still  
23    asserting that they're due payment on a broker fee. So I  
24    was concerned that there might be an additional claim  
25    against the estate if I were to sign a new lease that Mr.

1 Choudhri had presented to me. Also, the leases call for  
2 certain expenses to be advanced by the landlords --

3 Q Correct.

4 A -- and those include use of time by security staff,  
5 after hours use of the elevators and HVAC for move in and  
6 (indiscernible), all the kind of things that happen when the  
7 tenant moves in. I didn't want to incur those costs on such  
8 speculative proposed leases. And oh, almost all -- at least  
9 one of the leases that I remember, the other one probably  
10 had it and the brokers told me that any lease in today's  
11 market would have it, a certain period of rent abatement  
12 where there would be no cash paid. One of my them I think  
13 was at least a year. I'm told is multiple years in long-  
14 term leases in the current market. I was not interested in  
15 bringing in a tenant into this estate that is cash poor, in  
16 bankruptcy, with no prospect of revenue coming in for that  
17 period of time. So those are what come to mind right now as  
18 the reasons why I did not pursue new leases.

19 Q So with all that in mind, why wouldn't you have jumped  
20 through hoops to do everything possible to figure out  
21 whether or not these two leases that Ali brought you were  
22 real tenants and what the circumstances of their income and  
23 terms were?

24 A The source of the leases.

25 Q So the fact that Ali brought them to you, you judged



1     meant that they wouldn't be profitable or beneficial to the  
2     estate?

3     A     Well, no, it's all the factors I just mentioned. But  
4     you said why I didn't jump through hoops to contact who  
5     proposed them, that's why.

6     Q     So what were the terms of those leases?

7     A     I don't remember them as I sit here today. I mean, I  
8     remember some.

9     Q     Did you read them?

10    A     Yes.

11    Q     And how many were there?

12    A     There were two that I recall reading.

13    Q     All right, and were there any others where Ali said,  
14    this is somebody, despite the fact of what you were told by  
15    Hilco or somebody else, these are people who want to rent  
16    the space (indiscernible). Didn't he call you with several  
17    names?

18    A     He might have. I don't remember reaching out to anyone  
19    asking if they wanted to lease space, though.

20    Q     And you didn't reach out to these people because why?

21    A     I did not think it would be productive.

22    Q     But you didn't reach out to them?

23    A     Yeah, you've asked me that four times. I haven't.

24    Q     So we'll never know if it would have been productive or  
25    not?

1     A     No, I think we do know. I think when someone's  
2     motivated and wants to do a deal, they reach out to me.  
3     That happens in almost all of my cases. People say, hey,  
4     you've got something I want to buy. They call me. It's not  
5     somebody trying to delay the process who presents an offer  
6     on their behalf.

7     Q     And that's what you thought Ali was doing?

8     A     That was the conclusion I reached throughout this case,  
9     yes.

10    Q     Okay. From your perception of Ali, or from your  
11    perception of the potential tenant?

12    A     My perception of the tactics being employed by Mr.  
13    Choudhri and his related entities in the case.

14    Q     Okay. Fair enough.

15                 MR. BURKS: One moment, Your Honor. I may be done  
16    with this witness.

17    BY MR. BURKS:

18    Q     Do you have an opinion as to whether or not the winning  
19    cash auction price is affected by a credit bid?

20    A     Yes.

21    Q     And what is your opinion based on?

22    A     Assumptions about human nature and what I would do if I  
23    wanted to bid on an asset.

24                 MR. BURKS: No further questions, Judge.

25                 THE COURT: All right. Mr. Choudhri, do you have

1 any questions for this witness?

2 MR. CHOUDHURI: Yes, Your Honor.

3 THE COURT: Come on up.

4 DIRECT EXAMINATION OF CHRISTOPHER MURRAY

5 BY MR. CHOUDHURI:

6 Q Good afternoon, Mr. Murray.

7 A Good afternoon.

8 Q Mr. Murray, do you recall the first time we met?

9 A Yes.

10 Q And where was that?

11 A That was at 2425 West Loop South.

12 Q Was that on a Sunday?

13 A I think so, yeah.

14 Q Mr. Murray, would you represent that you've been  
15 truthful and honest to me in this process?

16 A Yes.

17 Q When did you make the decision to not pursue any claims  
18 against the Bank of Kuwait?

19 A I'm not sure I have made that decision. I think I am  
20 pursuing them.

21 Q You are pursuing claims against the Bank of Kuwait?

22 A Yeah. Those are live claims. They have value to me.  
23 They've not been released.

24 Q So the estate still has claims against the Bank of  
25 Kuwait as we sit here today?

1 A As we sit here today, yes. Yes, it does.

2 Q So when Mr. Troop stated that there was a stipulation  
3 in the final cash collateral that any claims that could have  
4 been brought had to be brought and can't be brought anymore  
5 --

6 A I don't think that's what he said. And that's not what  
7 I understood.

8 Q What did you understand?

9 A I understood that it was specific claims about the  
10 amount of the debt and the validity of the lien that  
11 objections to that challenge period came and went.

12 Q So what is the amount of the debt that you contend is  
13 owed to NBK?

14 A I don't contend anything about the amount of debt owed  
15 to NBK.

16 Q At your very first meeting with NBK, they told you that  
17 they wanted to auction the property immediately, right?

18 A I don't know if they said it that clearly. My  
19 impression from the first meeting was that, yes, they wanted  
20 to foreclose essentially and have an auction.

21 Q And can you explain why they didn't cooperate with the  
22 cash collateral for six weeks after you got appointed?

23 MR. FITZMAURICE: Objection, Your Honor. Sorry.  
24 Apologies. Objection, Your Honor, lacks foundation, assumes  
25 facts not in evidence.

1                   THE COURT: All right. I'll sustain the objection  
2 just to foundation.

3 BY MR. CHOUDHURI:

4 Q     Mr. Murray, do you recall having a meeting with me on  
5 March 13, 2024?

6 A     I don't know the specific date. We met a few times at  
7 least.

8 Q     So is there a reason that you did not want to pursue  
9 the lease with Vaxanix?

10 A    Yes.

11 Q    What is that reason?

12 A    Do I need to say them again? Again, several reasons.

13 Q    Was a specific question about Vaxanix asked earlier?

14 A    He asked about leases generally. I answered generally.  
15 But those reasons all apply in Vaxanix's case.

16 Q    So I just want to make sure my question is clear.  
17 There is -- what is the reason you decided not to pursue the  
18 lease with Vaxanix?

19 A    I wasn't sure if it was real. I had been advised that  
20 a serious tenant who was creditworthy and sophisticated  
21 would never present such a lease. There was not immediate  
22 payment of cash into that lease. You didn't tell me whether  
23 you were going to get a fee for presenting the lease to me,  
24 and I asked you as broker. So I was concerned that there  
25 would be a claim by you against the estate if I took the

1 lease. I was also concerned that, failing that, there would  
2 be another broker with their hand out for a fee. I thought  
3 it might be disruptive to a sale process to sign up a new  
4 lessee. Oh, that's one I forgot to mention before. Let's  
5 see. Cash out of pocket costs, disruption of the process,  
6 tenant probably not real. Oh, and that party never reached  
7 out to me directly. I only ever heard of them through you  
8 and then Faisal, who I spoke with about it. But you made  
9 that introduction that day.

10 Q Did he ask you for an SNDA?

11 A He did, yeah. I think he mentioned that the tenant  
12 would need an SNDA. That's my recollection.

13 Q And do you recall what you said?

14 A I think I said the bank would never give him one.

15 Q You said the bank would never give him one?

16 A I'm pretty sure it was my -- yeah, I think it was my  
17 understanding at the time that the bank was not going to  
18 subordinate to a new lessee when they wanted to auction and  
19 foreclose on the building.

20 Q Now you were not at the deposition of Michael Carter --

21 A No.

22 Q -- on June the 5th, right?

23 A No.

24 MR. CHOUDHURI: Your Honor, may I move to admit  
25 the deposition of Michael Carter? Is there any objection to

1     that?

2               MR. TROOP:  What's the ECF number?

3               MR. CHOUDHURI:  It's attached as an exhibit.  It's  
4     attached to the motion to compel, and it's an exhibit.  It  
5     is a rough draft, Your Honor, but we did just today receive  
6     a final copy.

7               THE COURT:  It's still going to have an ECF  
8     number, even it's got to be exhibit.  So I just need to know  
9     what the ECF number is.

10              MR. CHOUDHURI:  Yes, sir.

11              MR. SATHER:  499-22.

12              MR. CHOUDHURI:  Thank you.

13              THE COURT:  Again, Mr. Sather?  What?

14              MR. SATHER:  499-22.

15              THE COURT:  Any objection to 499-22?

16              MR. FITZMAURICE:  There is, Your Honor.

17              THE COURT:  Go ahead, ask -- go ahead.

18              MR. FITZMAURICE:  Mr. Carter is here.  Mr.  
19     Choudhri -- he already testified today.  Mr. Choudhri could  
20     have asked him then any questions that he wanted to ask.

21              THE COURT:  I'll sustain the objection of NBK to  
22     the admission of the deposition.  Thank you.

23              MR. CHOUDHURI:  So Your Honor, may I then recall  
24     Mr. Carter after I'm done because of the --

25              THE COURT:  You're going to have a chance to

1 present your evidence. But let's ask questions of this  
2 witness, please. Thank you.

3 MR. CHOUDHURI: Yes, Your Honor.

4 BY MR. CHOUDHURI:

5 Q So Mr. Murray, did you have conversations --

6 A When?

7 Q Did you or your counsel have conversations with Baker  
8 Botts, Tom Phillips, Justice Tom Phillips?

9 MR. FITZMAURICE: Objection, relevance.

10 THE COURT: What's the relevance?

11 MR. CHOUDHURI: Your Honor, It goes to the fact  
12 that there are assets of the estate and monies being offered  
13 to either prosecute those claims or sell those claims that  
14 can be used to stabilize the asset of the building so the  
15 building can then be sold for a lot more money than a fire  
16 sale and a value destroying sale.

17 MR. FITZMAURICE: That sounds at best like a  
18 confirmation issue, Judge, as opposed to whether or not the  
19 bank can credit bid.

20 THE COURT: I agree. I mean it's an objection to  
21 confirmation. It's not credit bidding.

22 BY MR. CHOUDHURI:

23 Q Do you recall having a conversation with me, Melissa  
24 Hayward, Jim Wetwiska, Jerry Alexander, R.J. Shannon and  
25 Kyung Lee on February 20th?



1 A Oh, your memory of that's better than mine. I think  
2 that was a Zoom meeting.

3 Q Right. Do you recall that?

4 A Yeah.

5 Q And do you recall at that meeting an assurance was made  
6 by you and Mr. Lee that we will not do a sale if there is no  
7 limit to a credit bid?

8 A I don't remember saying that.

9 Q Do you remember having any conversations with the Bank  
10 of Kuwait saying that if we don't limit the credit bid, it  
11 would affect the marketing and the sale of the building?

12 A I did -- I do remember those discussions, yes.

13 Q And what is the reason that the trustee decided to move  
14 forward with an option without a limit to the credit bid?

15 A Because while a cap on the credit bid, I think, would  
16 encourage more bidding, I don't think a lack of a cap on the  
17 credit bid is fatal to bidding and I think an auction is  
18 still in the estate's best interest, especially given that  
19 there's no other alternative that was viable then or now.

20 Q So earlier you just testified that NBK would not do an  
21 SNDA, right?

22 MR. FITZMAURICE: Objection, misstates the  
23 witness' testimony.

24 THE COURT: I'll sustain the objection.

25 BY MR. CHOUDHURI:

1 Q Did you present any leases to NBK since your  
2 appointment?

3 A Me, personally? No.

4 Q You or your representative?

5 A Yeah. My attorneys had copies of the leases. I know  
6 they talked to the bank's lawyers. I don't know if they  
7 shared or showed those leases to them. The bank's probably  
8 seen them in discovery since then. But I did not personally  
9 present a lease to the bank for their approval.

10 Q Do you think you needed the bank's approval?

11 A Yes.

12 Q But you chose not to present them any leases?

13 A Yep.

14 Q Can you explain why?

15 A Mr. Choudhri, again?

16 Q I just want to know, please. If you could just explain  
17 why you did present any leases to the bank for approval.

18 A I did not believe it was in the estate's best interest  
19 to enter into those leases. So there was no need to ask the  
20 bank's approval.

21 Q And everything you're testifying today is truthful here  
22 under oath, correct?

23 A Yes.

24 Q Do you remember having a conversation where I was --  
25 let me back up. Did you look into who Vaxanix is?

1 A No.

2 Q So you didn't look into who Vaxanix is at all?

3 A No. You told me a lot of things about them and the  
4 Dole family backing them and things like that. But no, I  
5 did not research who they were.

6 Q So did you receive terms with specific terms, amount  
7 per foot, how many years for the Vaxanix lease?

8 A You forwarded me an email with I think those terms and  
9 only those terms. And I said, that's not enough to go on,  
10 get me a lease. And it was sometime later you gave me a  
11 lease.

12 Q And so what did you do about the lease when you got the  
13 lease?

14 A By then I was pretty sure it was not a real offer.

15 Q But you gave the representative of Vaxanix your phone  
16 number, right? He asked for your phone number at the  
17 meeting on February 24th.

18 A He did.

19 Q And you gave him your phone number?

20 A I did.

21 Q And can you explain why you decided not to follow up  
22 with him and pursue to see if this lease was real or not,  
23 that's backed by the company that's owned by the Dole  
24 family?

25 A Well, this might be something where my recollection is

1 a little stronger than yours. We had that meeting very  
2 early on in the process. It was more than a month later  
3 that I got the email with the terms. And it was some time  
4 after that that you gave me the lease with all the terms in  
5 it and my thinking about whether something presented by you  
6 as an offer with respect to the building, my faith in that  
7 declined substantially during that time period to where by  
8 the time I got the lease from you, I was pretty sure it  
9 wasn't worth reading.

10 Q Why such hostility, Mr. Murray, towards me?

11 MR. FITZMAURICE: Objection. Objection, Your  
12 Honor, argumentative.

13 THE COURT: I'll sustain the objection. You can't  
14 argue with the witness.

15 BY MR. CHOUDHURI:

16 Q Mr. Murray, did you read the June 31st transcript?  
17 January 31 transcript, which was the motion to convert this  
18 case when the Chapter 11 trustee was appointed.

19 A Did I read the transcript? No, I listened to the  
20 audio, I think. Yeah. I did review that hearing, if that's  
21 your question.

22 Q Did you get any data from me or did you do any  
23 investigation on who Vaxanix is whatsoever?

24 MR. FITZMAURICE: Objection, Your Honor, asked and  
25 answered.

1                   THE COURT: I'll sustain the objection. Don't be  
2 repetitive, Mr. Choudhri.

3 BY MR. CHOUDHURI:

4 Q Do you know who IWG is?

5 A No.

6 Q International Workgroup, also a subsidiary  
7 (indiscernible) Regus.

8                   MR. FITZMAURICE: So objection, Your Honor, lacks  
9 foundation.

10                  THE COURT: I'll sustain the objection.

11 BY MR. CHOUDHURI:

12 Q Did you receive offers to sell the claim against the  
13 Bank of Kuwait?

14 A Yes.

15 Q How many?

16 A Two or three or four. A few.

17 Q And what did you do with them?

18                  MR. FITZMAURICE: So objection, Your Honor. These  
19 again sound like confirmation issues, not whether the bank  
20 should be allowed to credit bid.

21                  THE COURT: What's the relevance to credit  
22 bidding?

23                  MR. CHOUDHURI: Your Honor (indiscernible) that  
24 the position of to not pursue or sell the claim, not pursue  
25 or sell them the biggest asset of the estate, which is a

1 claim against the Bank of Kuwait because there's an  
2 agreement to pay unlimited admin expenses and there's an  
3 agreement where the trustee gets a significant commission on  
4 a sale versus reorganizing the asset and the emails as I --

5 THE COURT: That all sounds like plan confirmation  
6 to me. It doesn't sound anything at all like credit  
7 bidding. I'll sustain the objection. Thank you.

8 BY MR. CHOUDHURI:

9 Q Mr. Murray, did you tell Hilco not to communicate with  
10 me?

11 A No.

12 Q So if there's emails to that effect, you would dispute  
13 that?

14 MR. FITZMAURICE: Objection, Your Honor, lacks  
15 foundation. If there are emails, let's look at them.

16 THE COURT: I'll sustain the objection. Thank  
17 you.

18 BY MR. CHOUDHURI:

19 Q Mr. Murray, did NBK delay providing you support or  
20 approval or information you needed to get a cash collateral  
21 order approved in this case?

22 A Could you rephrase it? I'm not sure what you're  
23 asking.

24 Q Did NBK drag their feet in getting you approval or  
25 cooperation to come to court and get a cash collateral order

1 in this case?

2 A I don't know if they dragged their feet. I wanted it  
3 faster. It didn't happen faster, but it did happen.

4 Q Did you tell me that you wanted to abandon the  
5 building?

6 A I think in our discussions I said that was a  
7 possibility, that if the bank were not going to let me use  
8 cash collateral, that's what I would have to do.

9 Q And Mr. Murray, you recall that -- hang on. So Mr.  
10 Murray, the first time we met was on a Sunday, right?

11 A I think so.

12 Q And I texted you that I'm available for you 24/7?

13 A Yes, several times. Yeah.

14 Q And on Monday, you had a meeting with our accountants,  
15 Bob Norris. Do you recall that?

16 A I --

17 MR. FITZMAURICE: So again, Your Honor, objection  
18 to the bank's ability to credit bid at the auction tomorrow.

19 THE COURT: What's the relevance?

20 MR. CHOUDHURI: Your Honor, I'm getting there.

21 THE COURT: Well, I know you want to get there,  
22 but my question to you is, what is the relevance? Because  
23 if you can't explain it to me, then I'm going to cut you  
24 off. Okay. What's the relevance to credit bidding, which  
25 is what we're here for right now?

1           MR. CHOUDHURI: Your Honor, the relevance is that  
2     the bank has basically enlisted in allowing the trustee to  
3     only help them versus all the creditors and other creditors.

4           THE COURT: That'd be great if you pled that in  
5     your pleading, but you never said anything along those  
6     lines. And you don't get to come in here and do trial by  
7     ambush and just raise issues that weren't pled. So move on.  
8     Thank you.

9     BY MR. CHOUDHURI:

10    Q     Mr. Murray, when was a decision made to hire JLL?

11    A     I don't remember when.

12    Q     When was the decision made to sell the building and not  
13    lease it up?

14    A     As soon as it was clear NBK was going to commit to use  
15    cash collateral and pursue fund an auction process, that's  
16    when I decided to -- that was the most likely outcome.

17    Q     Did you receive an offer from QB Loop Property?

18    A     Yes.

19    Q     Did you have a Zoom call with Mr. Anwar Qadeer?

20    A     I don't remember if it was Zoom. I know I was on the  
21    phone with him at one point.

22    Q     And there was an offer made to buy the claims.

23           MR. FITZMAURICE: Your Honor, Mr. Murray doesn't  
24    need my help, but the same objection with respect to the  
25    relevance to credit bidding.



1           THE COURT: Again, what does this have to do with  
2 credit bidding? And I understand these are all potentially  
3 valid issues you might raise at plan confirmation, but as  
4 far as credit bidding, I don't see the relevance.

5           MR. CHOUDHURI: (indiscernible)

6           THE COURT: Mr. Choudhri, okay, so again, we're  
7 back to where we were before. Okay. I'm not going to let  
8 you ask repeated questions where you get overruled on  
9 objections, okay, or where I sustain objections based on  
10 questions that don't have any relevance to do with credit  
11 bidding. So move along. I'll give you a little bit more  
12 leeway, but then I'm going to ask you to sit back down  
13 again. Okay.

14 BY MR. CHOUDHURI:

15 Q     Would you agree with me if the building was more leased  
16 up, it would be more valuable?

17 A     No.

18 Q     The building would not be more valuable if it was  
19 leased up?

20 A     My only choices are yes and no. No, I don't know that  
21 that's necessarily the case.

22 Q     Have you hired an appraiser?

23 A     No.

24 Q     Did you represent to me in Feb. and the lawyers for the  
25 debtor 2425 that you were going to hire an appraiser?

1 A I don't even remember if we discussed that.

2 Q And R.J. Shannon and Kyung Lee are your lawyers,  
3 correct?

4 A Yes.

5 Q And they represent you and what they say and they speak  
6 on your behalf, when they speak on behalf of the trustee,  
7 correct?

8 A I would hope so, yes.

9 Q And you endorse what they do and what they say in  
10 representing you, correct?

11 MR. FITZMAURICE: Your Honor, again, relevance to  
12 the bank's credit bidding tomorrow at the auction.

13 THE COURT: Again, what is the relevance, Mr.  
14 Choudhri?

15 MR. CHOUDHURI: The relevance, Your Honor, is I  
16 have testimony from Mr. Carter and now testimony from Mr.  
17 Murray that is completely inconsistent with the  
18 communications with the bank and R.J. Shannon and Kyung Lee  
19 on their motivations of really what they want to do, and --

20 THE COURT: But what does it have to do with  
21 credit bidding?

22 MR. CHOUDHURI: Well, because they talk about  
23 credit bidding in those communications.

24 THE COURT: Okay. I'm going to sustain the  
25 objection and give you a little more leeway. Ask your next

1 question. Thank you.

2 BY MR. CHOUDHURI:

3 Q Mr. Murray, is there a reason that you would not  
4 support the bank accepting the \$26 million that's spelled  
5 out in the settlement agreement?

6 MR. FITZMAURICE: Objection, Your Honor, lacks  
7 foundation.

8 THE COURT: I'll sustain the objection. Thank  
9 you.

10 BY MR. CHOUDHURI:

11 Q Are you aware that your attorneys, you or your  
12 attorneys had a conversation with Jim Wetwiska and Jerry  
13 Alexander relating to the lender liability claims in this  
14 case?

15 MR. FITZMAURICE: Objection, Your Honor, hearsay.  
16 But also, what is the relevance to the credit bidding by the  
17 bank tomorrow.

18 THE COURT: I'll sustain the objection as to  
19 hearsay, even though I do think it's relevance. Go ahead.

20 BY MR. CHOUDHURI:

21 Q Mr. Murray, you filed a report to court about the  
22 status of the auction. Do you recall that?

23 A Yes.

24 Q And what is the current status as we sit here today?

25 A The current status is that I have received one

1 conforming bid. No, two conforming bids, one of which has  
2 funded escrow.

3 Q And that one is QB Loop Property?

4 A Yes.

5 Q Which is the same offer that you received through me  
6 back in April?

7 A Yeah, I think you sent me an offer from them.

8 Q March or April. And so, as we sit here today, on June  
9 the 17th, at 3:42 p.m., you have received one conforming  
10 offer, correct?

11 A Two conforming bids, one that funded.

12 Q And the funding deadline was 5:00 p.m.?

13 A Right. So yeah, one conforming --

14 Q So just so we're all clear, so on June the 14th,  
15 there's a bid deadline of 5:00 p.m.

16 A Yes.

17 Q And by 5:00 p.m., pursuant to your sale procedure  
18 motion that the Honorable Judge Norman has signed, the  
19 deadline to make a multimillion dollar deposit was 5:00  
20 p.m., Friday, June the 14th, correct?

21 A Yes.

22 Q And that has only been done by one bidder.

23 A Still yes.

24 Q And that is QB Loop Property, the general partner being  
25 Anwar Qadeer.

1                   MR. FITZMAURICE: So Your Honor, lacks foundation  
2 as to the general partner portion of that. The rest has  
3 been asked and answered three times.

4                   THE COURT: I'll sustain the objection as to the  
5 general partner position.

6 BY MR. CHOUDHURI:

7 Q The representative is Anwar Qadeer.

8 A I spoke with him. The representative now is -- they  
9 have a lawyer that counsels them.

10 Q Simon Mayer.

11 A Yes.

12 Q Right. With Locke Lord, correct?

13 A Mm-hmm.

14 Q And you're aware that the offer acceptance -- Hilco  
15 told you -- tell me if this is true or false. Did you  
16 represent to me that Hilco said they needed at least four  
17 months to market this building?

18 A No.

19 Q So you never said Hilco thinks it's going to be four  
20 months at least to market this building? Something like  
21 that never was made --

22 A I don't understand the question.

23                   MR. FITZMAURICE: Objection, Your Hono, asked  
24 answer.

25                   THE WITNESS: Oh, I'm sorry.

1 THE COURT: I'm sorry. I missed it. You said it  
2 so quickly, I didn't catch it.

3 MR. FITZMAURICE: I apologize, Your Honor. The  
4 objection is asked and answered.

5 THE COURT: I'll sustain the objection. Thank  
6 you.

7 BY MR. CHOUDHURI:

8 Q Have you gotten a feasibility study on the building?

9 A I don't know what that means.

10 Q So what experience do you, Chris Murray, have in  
11 running and stabilizing or selling office buildings?

12 MR. FITZMAURICE: So objection, Your Honor, again,  
13 relevance to the bank's --

14 THE COURT: Yeah. What's the relevance to credit  
15 bidding?

16 MR. CHOUDHURI: Your Honor, as I go through the  
17 evidence I'm about to get through, it's going to show that  
18 the bank is basically -- the trustee is supporting only one  
19 creditor versus all the other creditors because they have  
20 unlimited admin expense that the bank has agreed to pay.  
21 And so the bank has designed this so that the sale is really  
22 a legitimization of them winning the bid and credit bidding.  
23 There's all kinds of bad faith that have taken place that  
24 have been completely ignored and not pursued.

25 THE COURT: I'll let you respond to that.

1           MR. FITZMAURICE: Sure. So there's no truth to  
2 any of that. There's no actual evidence anywhere of -- I  
3 think the claim is that the bank has agreed to pay an  
4 unlimited amount of administrative expenses. I don't want  
5 to tell Mr. Choudhri how to do the job he's trying to do.  
6 That's maybe a question that could be asked, but the rest of  
7 this is not. Again, at best would be confirmation. It's  
8 not related to the --

9           THE COURT: I'll sustain the objection.

10          Go ahead, Mr. Choudhri.

11 BY MR. CHOUDHURI:

12 Q     Mr. Murray, I asked you earlier if you knew who IWG was  
13 and your answer is you don't know or you know or --

14 A     I don't know. The name rings a bell, but I don't know.

15 Q     Have you heard of the company called Regus?

16 A     The office space, the temporary rentals? Yeah.

17 Q     And so Regus is a publicly traded company. You're  
18 aware of that?

19 A     Yes.

20 Q     Have you investigated the creditworthiness of IWG,  
21 which is the parent company of Regus?

22           MR. FITZMAURICE: Objection, Your Honor, lacks  
23 foundation to the corporate relationship.

24           THE COURT: I'll sustain the objection.

25           THE WITNESS: No, I haven't.

1 BY MR. CHOUDHURI:

2 Q Are you aware of a full floor lease on the second floor  
3 with a company called Hunan, HST, I think?

4 A No.

5 Q How many of these leases that you were provided have  
6 you reviewed, Mr. Murray?

7 A There were probably a dozen or more documents that said  
8 lease on them that I reviewed at one time or another.

9 Q But you didn't bother to pursue them because it came  
10 from me; is that fair?

11 MR. FITZMAURICE: Objection, Your Honor, asked and  
12 answered.

13 THE COURT: I'll sustain the objection. Thank  
14 you.

15 BY MR. CHOUDHURI:

16 Q And you chose not to pursue these leases? I think  
17 you've answered that earlier, but I just want to make sure  
18 the record is clear. You chose not to pursue these leases?

19 MR. FITZMAURICE: Your Honor, the record is clear.  
20 The question has been asked and answered.

21 THE COURT: I'll sustain the objection. Thank  
22 you.

23 BY MR. CHOUDHURI:

24 Q Mr. Murray, is there a reason that you stopped  
25 responding to my emails?



1 A Yes.

2 Q And what was that?

3 A I didn't think I could trust things you were telling  
4 me. I said you could communicate with me as long as you  
5 copied your own counsel and my counsel. And you did that  
6 for a time and then you stopped.

7 Q Were you upset that I cross-examined you at the final  
8 cash collateral -- or the cash collateral hearing?

9 A No.

10 MR. FITZMAURICE: Your Honor -- well, never mind.  
11 I'll withdraw.

12 THE COURT: Okay.

13 BY MR. CHOUDHURI:

14 Q Do you know who Edna Castillo is?

15 A No.

16 Q Are you aware that Hilco is marketing the building with  
17 the furniture?

18 MR. FITZMAURICE: Objection, Your Honor, lacks  
19 foundation. Also relevance to the bank's credit bid  
20 tomorrow.

21 THE COURT: I'll sustain the objection. Thank  
22 you.

23 BY MR. CHOUDHURI:

24 Q Does any bid, including a credit bid, include the  
25 furniture that's in the building?

1           MR. FITZMAURICE:  Objection, Your Honor.  I think  
2   the issue for today is the bank's entitlement to credit bid  
3   at all, not what assets --

4           THE COURT:  I'll sustain the objection.  Again,  
5   Mr. Choudhri, you're again back on very, very thin ground.  
6   I'm interested in the issues that relate to credit bidding,  
7   and that's the only thing I'm really interested in now.  And  
8   you have this pattern of asking questions that basically  
9   have no rational basis to the motion that's before the  
10  court.  And again, I'm going to give you a little bit of  
11  leeway, but I'm going to cut you off.

12          MR. SATHER:  Your Honor, we lost the --

13          THE COURT:  Because you didn't ask to project and  
14  I took it down because it was just sitting on the screen.  
15  So if you want to project something, I'm happy to give you  
16  the control back again.

17          MR. CHOUDHURI:  Your Honor, may I project, please?

18  BY MR. CHOUDHURI:

19  Q     Mr. Murray, is this your email --

20          MR. FITZMAURICE:  Your Honor --

21  BY MR. CHOUDHURI:

22  Q     Is this your email address?

23          MR. FITZMAURICE:  Your Honor, objection.  Without  
24  knowing if this is an exhibit that's on the list, if it's  
25  been filed, it has ECF reference or has otherwise been

1 provided before --

2 THE COURT: Do you we where it is on the record?

3 BY MR. CHOUDHURI:

4 Q Mr. Murray, who -- you were appointed on February the  
5 9th, correct? This year?

6 A That sounds right.

7 Q And which third parties did you engage in this  
8 transaction?

9 MR. FITZMAURICE: Objection, Your Honor, relevance  
10 to the bank's credit bid tomorrow at the auction.

11 THE COURT: Again, Mr. Choudhri, what's the  
12 relevance to credit bidding?

13 MR. CHOUDHURI: Your Honor, it goes to when he  
14 testifies earlier that he needs the bank's approval to do  
15 leases and there's no -- and then the bank testifies that  
16 they've received no leases, and he's saying he needs the  
17 bank's approval to do leases and the value --

18 THE COURT: That has absolutely nothing with  
19 credit bidding. Absolutely nothing. All right. So again,  
20 I'm going to sustain their objection and give you just a  
21 little bit more leeway before you hang yourself and I tell  
22 you to sit back down.

23 MR. CHOUDHURI: I'm trying to connect --

24 THE COURT: I turned you off because you're not  
25 projecting anything that's admissible. I'll turn you back

1 on, but if you want to put something in evidence, you're  
2 free to do so, but I'm just not going to let you project  
3 forever.

4 BY MR. CHOUDHURI:

5 Q Are you supportive of the bank's credit bid?

6 MR. FITZMAURICE: So -- well, withdrawn.

7 THE WITNESS: Yes.

8 THE COURT: Then I ask the question, then why is  
9 that?

10 THE WITNESS: Well, I'm supportive of any bid in  
11 an auction. I would love to sell the building.

12 THE COURT: All right. Thank you.

13 Go ahead.

14 BY MR. CHOUDHURI:

15 Q Can you explain to me, so there's a sale motion and  
16 there's a bid procedure. And the bid procedure says the  
17 minimum credit bid is \$18,600,000, correct?

18 A That's -- no, no. I don't think any of that's right.

19 Q I'm sorry. Stalking horse.

20 A Still no. There's bidding procedures. There's a  
21 stalking horse bid and that included a credit bid.

22 Q Stalking horse bid is \$18,600,000, correct?

23 A Yes. I think that's right.

24 Q And then it says, any additional bids above that are  
25 \$250,000 increments?

1 A The bid increment is \$250,000, yes, if I recall.

2 Q So \$18,600,000 will be the first bid. And under that  
3 process, there is no fee or commission to the trustee,  
4 correct?

5 A No, that's incorrect.

6 Q There is a commission to the trustee on a credit bid?

7 A Well, your question's not as simple as that. There  
8 would be a commission on disbursements in the case. I don't  
9 believe that a credit bid is a constructive disbursement  
10 under the case law, but that doesn't mean that there  
11 wouldn't be other monies flowing in connection with the sale  
12 of the stalking horse price that would result in a  
13 commission.

14 Q So as I understand it as we sit here today, the minimum  
15 credit -- the minimum bid right now on the stalking horse is  
16 \$18,600,000 and the next bid is \$18,850,000 which would be  
17 \$250,000 more, which is what Judge Norman approved.

18 A No. The way you're describing it is unclear and I'm  
19 not sure it's accurate. Could you maybe ask again?

20 Q So when I reviewed the civil motion, the civil -- the  
21 bid procedures, which incorporates, which has an element of  
22 credit bid embedded in it, it states that the minimum  
23 stalking horse bid is \$18,600,000 and the next bid is  
24 \$250,000. There's a definition called minimum overbid. So  
25 the next bid up is \$250,000 above \$18.6.

1 Q There's a minimum incremental overbid of \$250,000 in  
2 the bid procedures. Yes, that's right.

3 Q So the next bid would be \$18,850,000.

4 A Yes, I suppose. 18.6 plus 250, that math is correct.

5 Q So can you explain to me --

6 MR. CHOUDHURI: There's an exhibit, Mr. Sather, if  
7 you could pull up the Hilco. It's in -- I believe it's in  
8 one of the exhibits, and I could pull it up.

9 BY MR. CHOUDHURI:

10 Q Can you explain to me why -- now, you've hired Hilco,  
11 correct?

12 A Yes.

13 Q And Hilco is marketing the building at your instruction  
14 and direction?

15 A Yes.

16 Q And so the information they're giving to the market  
17 based on credit bids, based on what somebody's buying, that  
18 information is -- you're the source of that information?

19 A Yeah. I don't hear everything they say to everybody,  
20 but yes, I'm the source of the information and the marketing  
21 of the building and (indiscernible) --

22 Q And can you explain to me why the minimum bid that's  
23 being marketed to the public is \$19,750,000?

24 A Yes.

25 Q Please explain.

1     A     The minimum bid -- the minimum cash bid above the  
2     stalking horse credit bid for it to still be as worthwhile  
3     to the unsecured creditors is higher than just the 250  
4     increment. And it's higher because, in a cash bid scenario,  
5     multiple things change. One of them is that Hilco's  
6     commission goes up and that will require more cash. That's  
7     cash that would otherwise have flowed to creditors. There  
8     might also be incremental admins which the bank would cover,  
9     but that would come out of cash of the credit bid in that  
10    situation. Also, in a cash bid scenario, I believe that  
11    money would be part of the trustee's commission and that  
12    would increase the administrative expense there. So the  
13    difference between the minimum overbid and the stalking  
14    horse bid accounts for that incremental admin expense that  
15    happens when I take cash instead of a credit bid. And that  
16    has to be higher, because if it weren't, creditors would be  
17    worse off on the cash bid as opposed to the nominal amount  
18    of the credit bid.

19   Q     So as we sit here today, the credit bid is 18.6 by the  
20   Bank of Kuwait.

21   A     Yes.

22   Q     Other than the QB Loop Property making a bid?

23                 MR. FITZMAURICE: I think objection, vague as  
24   to --

25                 THE COURT: Be more specific in your question, Mr.

1 Choudhri.

2 MR. CHOUDHURI: Yes, sir.

3 BY MR. CHOUDHURI:

4 Q So as we sit here today, the bid by the National Bank  
5 of Kuwait is \$18,600,000. And the next bid that's there is  
6 by QB Loop Property.

7 A There is also a bid by QB Loop Property.

8 Q And that's the only qualified bid that is conforming.

9 MR. FITZMAURICE: So objection, Your Honor. I  
10 think it mischaracterizes the record. I would suggest the  
11 bank's bid is a qualified bid that's conforming under the  
12 court's order.

13 MR. CHOUDHURI: You're right. He's right.

14 THE COURT: Okay.

15 BY MR. CHOUDHURI:

16 Q So outside the bank's bid, that's the only qualified  
17 conforming bid is the bid from QB Loop Property.

18 A Right. The only bid that funded. And yeah, the bank  
19 is by definition a qualified bid. So yeah, I guess there's  
20 two.

21 MR. CHOUDHURI: Your Honor, may I -- I want to  
22 show an exhibit to the court.

23 BY MR. CHOUDHURI:

24 Q Does this look familiar to you, Mr. Murray?

25 A Yes.



1 Q And so we're talking about this here. The minimum  
2 overbid \$19,750,000. But that's not -- nobody's offered  
3 \$19,750,000 or anything above 18.6. Let me back up. That's  
4 a bad question. So the stalking horse bid is \$18,600,000.  
5 And this is the brochure that Hilco is presenting to the  
6 public, correct?

7 A Yes.

8 Q It says the minimum overbid before anybody else's bid  
9 is \$19,750,000.

10 A Yes.

11 Q Does that conform with Judge Norman's sale motion order  
12 in the bankruptcy --

13 A Yes.

14 Q It does?

15 A Yes.

16 Q So that \$250,000 from 18.6 to \$19.750, there's no other  
17 bidders that have made those bids?

18 A No. Both things can be true. The minimum increment  
19 can be 250 and the minimum cash overbid that, in my  
20 judgment, would be enough to provide the same benefit to  
21 creditors as the bank's nominal credit bid, those can be  
22 different numbers, and they are.

23 Q I'm just confused. So who's bid \$19.750?

24 A No one has.

25 Q So why is the minimum overbid \$19.750 when the sale

1 motion says 18.6 and 250 incremental bids above it?

2 A I can try to explain it again.

3 Q Because I don't understand it. I'm sorry. I've tried  
4 to understand it. I'm not understanding it. So if you can  
5 explain it.

6 THE COURT: One more time, and then I'll cut him  
7 off. Go ahead. Tell him again. I understand why it is,  
8 but go ahead.

9 THE WITNESS: Okay. A cash bid creates additional  
10 admin expenses for the estate that a credit bid does not.  
11 That is money that would otherwise go to unsecured  
12 creditors. So in order for unsecured creditors to do as  
13 well as they would under the nominal credit bid, the cash  
14 bid has to be substantially higher. I made an attempt to  
15 estimate how much higher. That's what I came up with.

16 BY MR. CHOUDHURI:

17 Q Mr. Murray, you and I have texted, correct?

18 A Yeah.

19 Q Do you recall telling me that you believe what the bank  
20 wanted to do was have a value destroying auction? Did you  
21 ever use the word value destroying auction?

22 A I don't know. I don't know. I don't know the context  
23 of what you're talking about.

24 Q When we had a discussion about leasing up the building,  
25 you represented to me that the bank does not want a lease of

1 the building because it'll give you an opportunity to add  
2 more value.

3 A I recall talking with you about what I assumed the bank  
4 might want or not want. But I don't speak for the bank.

5 Q Right. So the last appraisal on the property that  
6 you've seen or the bank has completed, as far as your  
7 knowledge, is June 2023.

8 A I really don't remember the dates of the appraisals.

9 Q But you've never gotten an appraisal?

10 A Right. I have not.

11 Q Is there any reason why you decided not to get an  
12 appraisal?

13 A They cost money. I didn't want to spend it. And if  
14 we're having an auction, that's better than an appraisal in  
15 terms of finding out money that I can get for an asset.

16 Q So have you reviewed the appraisal, the (indiscernible)  
17 appraisal that the bank has?

18 MR. FITZMAURICE: Objection, Your Honor, lacks  
19 foundation. But also relevance to the credit bid.

20 THE COURT: I'll sustain the objection as to  
21 relevance.

22 BY MR. CHOUDHURI:

23 Q Mr. Murray, was there any reason that you decided not  
24 to reorganize the debtor?

25 A In a sense, I am. I don't know what you mean. You

1 mean to continue operating -- well, I'll let you ask the  
2 question.

3 Q Has the bank agreed to give you -- to put no limit on  
4 the admin expenses in this case?

5 A Yes. Yes.

6 Q So there's no limit? Open checkbook?

7 A There might be some structural limits in the way the  
8 plan is made, but my understanding is they're going to cover  
9 with additional cash if necessary, all approved admins under  
10 the plan.

11 Q So when I ask what are the admin expenses so I can  
12 maybe make a better deal, a better offer to help and if the  
13 answer is it's not relevant, we're not going to tell you  
14 because it's unlimited, do you think that's reasonable and  
15 that's sound judgment, to not allow others to have an  
16 opportunity?

17 MR. FITZMAURICE: So objection, Your Honor,  
18 assumes facts not in evidence. I think it mischaracterizes  
19 the witness' testimony. It's also not relevant to the  
20 credit bidding in question.

21 THE COURT: I'll sustain the objection.

22 BY MR. CHOUDHURI:

23 Q Mr. Murray, are you aware that I had a conversation  
24 with R.J. Shannon on May 24th regarding takeout financing  
25 and having the trustee facilitate and help with takeout

1     financing and exit financing?

2     A     Yeah.  He told me you had a call.

3     Q     And your desire is to not entertain any takeout  
4     financing where the bank is taken out and a new lender is  
5     put in?

6     A     I would love that.

7     Q     You would love that?

8     A     Absolutely.

9     Q     So if a new lender comes in and takes out the Bank of  
10    Kuwait, you would be in support of that?

11    A     There's a lot --

12                 MR. FITZMAURICE:  So Your Honor, again, relevance  
13    to whether the bank can credit bid at the auction.

14                 THE COURT:  What is the relevance to credit  
15    bidding, Mr. Choudhri?  I mean, you're arguing about a plan,  
16    but we're not there yet.  We're not going to get there  
17    today.  So I need to know where you're going because I have  
18    almost reached the point of my limit where I'm just going to  
19    simply say no more.  All right.  If you have an issue as to  
20    credit bidding with Mr. Murray -- and I'm not sure what Mr.  
21    Murray does has anything to do with credit bidding at all,  
22    because your complaints really aren't against him.  They're  
23    against the bank -- then ask now or forever hold your peace.  
24    Okay.

25    BY MR. CHOUDHURI:

1 Q The sale motion was drafted by the Bank of Kuwait,  
2 correct?

3 MR. FITZMAURICE: Objection, Your Honor, asked and  
4 answered.

5 THE COURT: I'll sustain the objection. One more  
6 question.

7 MR. CHOUDHURI: I don't recall asking that  
8 question.

9 THE COURT: I do, and that's all that makes the  
10 difference.

11 MR. CHOUDHURI: Okay.

12 THE COURT: Thank you.

13 BY MR. CHOUDHURI:

14 Q So as we sit here, since you've been hired, there's  
15 nobody engaged, no professional engaged to lease the  
16 building, correct?

17 MR. FITZMAURICE: Objection, Your Honor, asked and  
18 answered.

19 THE COURT: I'll sustain the objection. You're  
20 done, Mr. Choudhri. Thanks. Thank you. Sit down.

21 All right. Mr. Fitzmaurice, do you have questions  
22 of this witness?

23 MR. FITZMAURICE: Just a couple, Your Honor.

24 THE COURT: Yeah. Go ahead.

25 CROSS-EXAMINATION OF CHRISTOPHER MURRAY

1 BY MR. FITZMAURICE:

2 Q Mr. Murray, are you familiar with the final cash  
3 collateral order that was entered in this case?

4 A Yes.

5 Q And the final cash collateral order contains  
6 stipulations between the estate on the one hand and the bank  
7 on the other; is that right?

8 A Yes.

9 Q And the final cash collateral order provides that if  
10 you as trustee don't bring a challenge to the validity and  
11 amount of the bank's lien by a date that is ten days before  
12 for the confirmation hearing, then those stipulations binds  
13 the estate and all parties in interest; is that right?

14 A That's my recollection.

15 Q Okay, and did you bring a challenge during the  
16 challenge period?

17 A No, I did not.

18 Q Do you recall that Mr. Choudhri asked you questions  
19 about Vaxanix?

20 A Yes.

21 Q There was a representative or a lawyer, I think, from  
22 Vaxanix named Faisal Shah?

23 A Yes.

24 Q Is he a tenant in the building?

25 A Yes.

1 Q At 2425 West Loop South?

2 A Yes.

3 Q Okay. Have you ever spoken to someone who actually  
4 works for Vaxanix?

5 A No, other than Mr. Shah, who said he represented them.

6 Q Yes.

7 A But no, no one --

8 Q Mr. Choudhri said that Mr. Shah represented them?

9 A Mr. Shah said that --

10 Q Okay.

11 A -- at a meeting where Mr. Choudhri introduced us.

12 Q Got it. During the course of the case, have you had  
13 occasion to ask the bank to approve the use of cash  
14 collateral?

15 A Yes.

16 Q Has the bank ever said no?

17 A No. Well, we asked for some things in the initial  
18 budget that you did not agree to. There have been  
19 subsequent requests and I don't think you've denied any of  
20 those.

21 Q Thank you. Thank you very much, Mr. Murray?

22 THE COURT: Mr. Burks?

23 MR. BURKS: Yes, Your Honor. Thank you. Your  
24 Honor, I'm addressing one area. There was reference to the  
25 final order authorizing the trustee to use collateral, cash



1 collateral. It's Document Number 187. Question was asked  
2 with language different than what's in the order and it was  
3 answered inappropriately. So I would like to put on the  
4 screen Document Number 187 so that we can see --

5 THE COURT: Where are you going to project from?  
6 Over there, right?

7 MR. BURKS: Yes.

8 THE COURT: Go ahead.

9 MR. BURKS: Document Number 187, final order  
10 authorizing the trustee to use cash collateral.

11 REDIRECT EXAMINATION OF CHRISTOPHER MURRAY

12 BY MR. BURKS:

13 Q All right. Sir, do you see it on the screen?

14 A I do.

15 Q Let's turn to Page 4, Paragraph 3.

16 MR. BURKS: Up a little more. Up a little more,  
17 please. Well, just (indiscernible) --

18 MR. SATHER: 3(a)?

19 MR. BURKS: 3(a) would be the top line and then  
20 (indiscernible) all right. Right there. Good.

21 BY MR. BURKS:

22 Q So you were asked a question about that a moment ago.  
23 When you answered the question of the affirmative, did you  
24 understand the question that was being asked to be not only  
25 what your duties were by a certain date, as far as objecting

1 to the NBK note or any defenses to it?

2 A I'm sorry?

3 Q Read that -- read that. I'm going to ask you two  
4 questions. Read that -- read that paragraph yourself,  
5 please. I'm reading it, too. When you're finished reading,  
6 let me know, sir.

7 A Okay.

8 Q Did you file any complaint or any pleading challenging  
9 the amount of allowance of the NBK claim?

10 A No.

11 Q Did you file any complaint or any other pleading  
12 seeking to equitably subordinate that claim?

13 A No.

14 Q And certainly, would you agree that especially if we  
15 have a hearing on June 18th, which the judge has said we  
16 are, that the time -- the time, it's more than ten days  
17 before a hearing, correct?

18 A Yes.

19 Q So you're not bringing any claim?

20 A I have not brought a claim by the deadline, no.

21 Q All right. Now, does it say anywhere in this paragraph  
22 that no other party can bring a claim?

23 A It says what it says.

24 Q Does it say anywhere in this paragraph that no other  
25 party can bring a claim?

1 A No, I don't see that.

2 Q Does it say that it concerns just --

3 MR. BURKS: So Your Honor, at this time I wish the  
4 court to take judicial notice of document number -- final  
5 order authorizing the trustee, Document Number 187.

6 THE COURT: I'll take judicial notice of that  
7 order. I signed it. Thank you.

8 MR. BURKS: Docket Number 321, order on motion to  
9 strike. Can we have that on the screen, please?

10 BY MR. BURKS:

11 Q Mr. Murray, I'll give you a chance to read that. Now  
12 this is National Bank of -- an order, National Bank of  
13 Kuwait's motion to strike the objection and claim of  
14 National Bank of Kuwait. You didn't file that objection to  
15 claim, did you?

16 A No.

17 Q Somebody else filed it?

18 A Yes.

19 Q And National Bank of Kuwait said, oh, let's move to  
20 strike it.

21 A It looks like they filed a motion to strike. Yes.

22 Q Did the say court say that the court disagrees with the  
23 argument of NBK that the final cash collateral order gives  
24 the exclusive right to object to the claims to the Chapter  
25 11 trustee. Do you see that?

1 A Yes, sir. You read that correctly.

2 Q So is it your position that if somebody else had a  
3 problem with the National Bank of Kuwait, you didn't have  
4 the duty to step in and make those objections?

5 MR. FITZMAURICE: Objection, Your Honor. It  
6 mischaracterizes the order, the witness' testimony. There  
7 is no -- there is no argument that Mr. Murray had a duty to  
8 do anything. The question is, what does the cash collateral  
9 order provide and what is its impact on creditors based on  
10 his decision to act or not act.

11 THE COURT: I'll let you respond, Mr. Burks.

12 MR. BURKS: I'm not asking -- I'm not presuming  
13 anything. I'm asking him does he think that he had a duty  
14 to object to claims if he disagreed with them or if he could  
15 have let somebody else do it. That's all I'm asking.

16 MR. FITZMAURICE: Your Honor, it also then calls  
17 for a legal conclusion about whether Mr. Murray had a duty  
18 to act in a particular circumstance.

19 MR. BURKS: This is --

20 THE COURT: I'm going to overrule the objection  
21 and let him answer the question.

22 Mr. Burks, go ahead.

23 MR. BURKS: I don't know -- I don't know if you've  
24 tracked the question to begin with, and I sure don't know if  
25 you've tracked --

1 THE WITNESS: I might have lost part of it.

2 MR. BURKS: Yeah.

3 THE WITNESS: If you could begin.

4 BY MR. BURKS:

5 Q Given the plain language of the final cash collateral  
6 order, given the judge's order of May 13th, do you view that  
7 if you disagree with the claim of National Bank of Kuwait,  
8 do you view that you had a duty to object to it?

9 A I think you're talking about two things. I'm going to  
10 try to answer them both.

11 Q Thanks.

12 A I think the cash collateral order said that if I want  
13 to bring certain claims or objections, I had a deadline to  
14 do it. I think I had the duty to evaluate whether bringing  
15 objections or claims was in the best interest of the estate.  
16 I made that determination. It was no, I didn't file those.  
17 I don't know what the order on the motion to strike has to  
18 do with that, or how to answer the second part of your  
19 question.

20 Q All right. Do you think that your failure to bring --  
21 your decision not to bring any action against National Bank  
22 of Kuwait or within the scope of the cash collateral order,  
23 do you think that somehow precludes any other party from  
24 being such a claim?

25 MR. FITZMAURICE: Your Honor, calls for a legal

1 conclusion.

2 THE COURT: The orders speak for themselves  
3 (indiscernible) Mr. Burks, what he thinks really doesn't  
4 make any difference. Thank you.

5 MR. BURKS: Thank you, Your Honor. I have no  
6 further questions, Judge.

7 THE COURT: All right. Mr. Choudhri? Mr.  
8 Choudhri, I warn you that the scope of your examination is  
9 limited to Mr. Fitzmaurice's questions and Mr. Burks'  
10 questions.

11 MR. CHOUDHURI: Thank you.

12 THE COURT: Thank you.

13 REDIRECT EXAMINATION OF CHRISTOPHER MURRAY

14 BY MR. CHOUDHURI:

15 Q Mr. Murray, I think I understood you to testify earlier  
16 that you are pursuing claims against the Bank of Kuwait; is  
17 that accurate?

18 MR. FITZMAURICE: Your Honor, I think that's  
19 beyond the scope.

20 THE COURT: It's outside the scope.

21 BY MR. CHOUDHURI:

22 Q Were there graphs and documents that you received from  
23 the Bank of Kuwait that I asked you for that included credit  
24 bid comments that you said you could not provide and you'd  
25 have to ask Kyung Lee to provide? Do you recall that

1 conversation?

2 MR. FITZMAURICE: So same objection, Your Honor.

3 THE COURT: Again, Mr. Choudhri, that's totally  
4 outside the scope of the two prior examining attorneys.  
5 You're limited only to questions or issues that they raised.  
6 You don't get another chance at the witness.

7 BY MR. CHOUDHURI:

8 Q So Mr. Murray, do you believe that you can still bring  
9 claims? Let me back up. Have you valued the claims against  
10 the Bank of Kuwait?

11 A Yes.

12 Q And what have you valued them at?

13 A There's not really a specific number. I have a sense  
14 of a range of value.

15 Q And what is that range?

16 A It's below what unsecured creditors are getting under  
17 the plan.

18 Q And what are the unsecured creditors getting under the  
19 plan?

20 A Trade gets 70 percent. Everybody gets a share in the  
21 liquidating trust, which is prefunded with 150 and then  
22 whatever the claims fall out to be. They haven't gone  
23 through that process yet.

24 Q So that's -- so approximately under \$400,000.

25 A The minimum. Yeah, 388, I think.

1 Q So \$388,000.

2 A Yeah.

3 Q And are you aware of an offer that was made for  
4 \$700,000 cash for claims that the estate owns and holds?  
5 Did you receive an offer for \$700,000 cash with a cashier's  
6 check payable to Chris Murray, trustee and, on the memo,  
7 purchase of NBK claims, cashier's check in the amount of  
8 \$700,000? Did you receive a copy of the cashier's checking  
9 with the offer?

10 A Was this the one from like a day or so ago?

11 Q On June the 13th?

12 A Oh, okay. Yes.

13 Q And you rejected that?

14 A Yes.

15 Q And what's the reason of rejecting that?

16 A It's not an apples to apples comparison with the amount  
17 of cash the unsecured creditors get. Also, I'm not sure  
18 it's a valid offer. Also, the last time an entity of yours  
19 wanted to buy claims, I said that the proof of funds needed  
20 to be the money in the bank in attorney's IOLTA account.  
21 That happened, and I sold those claims. That did not happen  
22 this time.

23 Q Did you receive a copy of the cashier's check?

24 A I saw an image of what looked like a cashier's check.

25 Q So if you receive a cashier's check for \$700,000 for



1 claims against the Bank of Kuwait or if it was wired into  
2 the account versus a cashier's check if the cashier's check  
3 isn't good enough, then --

4 A The money is just one problem.

5 Q What's the other problem?

6 A The other problem is, under the bank's plan, unsecured  
7 creditors get the cash that I mentioned. If you buy those  
8 claims, I lose the plan and you've withdrawn the only  
9 alternative plan. So I either abandon the asset and we  
10 convert and then I take the 700 and I throw it against admin  
11 claims which already exceed that amount. So then there will  
12 be nothing for the unsecured creditors. But are you asking  
13 that question as Ali Choudhri personally or as the entity  
14 represented by counsel who made the purported offer?  
15 Because maybe they're not the same.

16 Q Right. I'm asking you if you received an offer to sell  
17 the claims which demonstrate there's some value. These  
18 claims have value. Let me back up. Did the Bank of Kuwait  
19 give you an investigation fund that limited your  
20 investigation to only two weeks?

21 MR. FITZMAURICE: Objection, Your Honor, relevance  
22 to the bank's credit bid tomorrow. We've gone on this path  
23 and an adjacent one for a while, but I don't know what the  
24 connection is to the --

25 THE COURT: I'm not sure I see the relevance.

1           Mr. Choudhri, I'll let you argue relevance.

2   BY MR. CHOUDHURI:

3   Q     Is it your understanding that the plan --

4           THE COURT:  Then I'll sustain the objection.

5   Thank you.

6           MR. FITZMAURICE:  Thank you, Your Honor.

7           MR. CHOUDHURI:  Sorry?

8           THE COURT:  Go ahead.

9   BY MR. CHOUDHURI:

10   Q     The plan and the sale of the property is part and  
11   parcel -- NBK's plan and the sale of the property is part  
12   and parcel.

13           MR. FITZMAURICE:  So objection, Your Honor, I  
14   think we dealt with this issue earlier and Your Honor --

15           THE COURT:  I'll sustain the objection.  Thank  
16   you.

17   BY MR. CHOUDHURI:

18   Q     So when you say you're pursuing the claims against the  
19   bank, are you pursuing the claims against the bank or are  
20   you not pursuing the claims as we sit here today?

21           MR. FITZMAURICE:  So Your Honor, objection,  
22   compound, but also relevance to the credit bidding.

23           THE COURT:  Again, Mr. Choudhri, where are we  
24   headed as it relates to the issue that we're here right now  
25   trying to try?  I want to give you every opportunity before

1 I cut you off again for I think what is probably the fifth  
2 time for you to make a rational argument as to why I should  
3 allow this testimony on a motion to prohibit credit bidding.  
4 And I understand you have legitimate concerns about plan  
5 confirmation. We're not at plan confirmation.

6 BY MR. CHOUDHURI:

7 Q Did you have conversations with Hilco --

8 THE COURT: No, no. I need you to respond to me.

9 MR. CHOUDHURI: Sure.

10 THE COURT: Because you haven't responded. You  
11 just simply are being silent. Is there some basis, some  
12 rational basis for this to have any relevance to the issue  
13 that I'm about to decide?

14 MR. CHOUDHURI: Your Honor, I believe it goes to  
15 motivation --

16 THE COURT: Motivation for what?

17 MR. CHOUDHURI: Personal interest of the trustee  
18 (indiscernible) --

19 THE COURT: Which has absolutely -- again has  
20 absolutely nothing to do with credit bidding. Okay, and I  
21 don't have to explain that to you. But it doesn't. Okay.  
22 So move on. I'll give you a little bit of leeway, but if  
23 you go down this road, you're going to be sitting down in  
24 like two seconds.

25 BY MR. CHOUDHURI:

1 Q Did you have discussions with Hilco about credit  
2 bidding?

3 A Yes.

4 Q Did you have email communications with Hilco about  
5 credit bidding?

6 A I don't remember how we communicated. It was usually  
7 by phone, but I've talked to them about credit bidding.

8 Q And what was Hilco's perspective about credit bidding?

9 A In what sense?

10 Q Would credit bidding deter buyers, motivate buyers or  
11 deter buyers?

12 A I honestly don't remember what they said about it. My  
13 impression from all of that was that the existence of a  
14 credit bid might limit sort of the number of people who  
15 would also participate.

16 Q So credit bid basically chills bidders, chills the  
17 buyer pool of people who potentially did.

18 MR. FITZMAURICE: Objection, Your Honor, to the  
19 use of the term chilling. It mischaracterizes the witness'  
20 testimony.

21 THE COURT: I'll overrule the objection. Go  
22 ahead.

23 THE WITNESS: Yeah. I mean, all things being  
24 equal, it's not as good as not credit bidding. The same  
25 effect happens when somebody with extremely deep pockets

1 shows up at the auction. You have the risk of being outbid,  
2 and then some people might not participate in an auction  
3 that they might lose. So, yeah.

4 BY MR. CHOUDHURI:

5 Q DO you have a range or assessment of what the property  
6 is worth?

7 A Not really. I mean, only a very wide range.

8 Q And what would that wide range be?

9 A Well, there's a credit bid stalking horse minus other  
10 things that have to get paid and that sort of value the  
11 building to the estate. And on the other end, there's  
12 whatever I can get at auction. I don't know what that's  
13 going to be.

14 Q But as we sit here today, there's only one bidder, non-  
15 stalking horse bidder at this auction, correct?

16 A Yes.

17 Q So would it be fair -- I think you've already answered  
18 this. I think I'm almost done -- that when the public knows  
19 there's credit bidding by a bank that has no limitations on  
20 that credit bid that -- let me back up. Do you believe  
21 that's a true market test when there's a credit bid that's  
22 unlimited?

23 MR. FITZMAURICE: So --

24 THE WITNESS: The credit bid's not unlimited. But  
25 yes, I do think it's a fair market test. I think it's what

1 happens in almost every single bankruptcy case where there's  
2 a secured lender willing to participate in a process like  
3 this. It happens all the time. It's also almost  
4 definitionally what a foreclosure is.

5 BY MR. CHOUDHURI:

6 Q So this auction, is this a foreclosure or is this an  
7 auction to determine the market test of the property?

8 A This is an auction for the property by me.

9 Q Not a foreclosure?

10 A That's a state law term. I was using a colloquial to  
11 refer to when a secured lender bids against a property and  
12 it's forced to sell.

13 Q And so is there a possibility, in your opinion, if it's  
14 found that the Bank of Kuwait is nonexistent, doesn't have a  
15 claim?

16 MR. FITZMAURICE: So I'm not sure there's a  
17 question, Your Honor. But I feel like it calls for  
18 speculation, if there is one.

19 THE COURT: I think so too, and I'll sustain the  
20 objection.

21 BY MR. CHOUDHURI:

22 Q Mr. Murray, if there was more time to market and sell  
23 this property, and if there was someone like CBRE or  
24 Transwestern to lease the property, or analyze the leases  
25 that you have, if they're valid or good or not, and spend

1     about 60 to 90 days, in your opinion, would that add more  
2     value and bring more buyers?

3             MR. FITZMAURICE:  Objection, Your Honor, calls for  
4     speculation.  It's also not relevant.

5             THE COURT:  I'll sustain -- I'll sustain the  
6     objection as to it's speculation.  Thank you.

7     BY MR. CHOUDHURI:

8     Q     Mr. Murray, if more time is spent marketing the  
9     property, would that potentially result in a higher price  
10    with more buyers?

11            MR. FITZMAURICE:  Objection, Your Honor, calls for  
12    speculation.  Also not relevant to whether or not the bank  
13    is entitled to credit bid.

14            THE COURT:  I'll sustain the objection as to  
15    relevance.  Again, and if you want to make that argument  
16    tomorrow at plan confirmation -- excuse me, on Wednesday at  
17    plan confirmation, feel free to.  But it has nothing to do  
18    with credit bidding..

19    BY MR. CHOUDHURI:

20    Q     Is there any element of credit bidding in the plan, Mr.  
21    Murray?

22            MR. FITZMAURICE:  Objection, Your Honor.  This is  
23    -- I mean, the plan, that's a confirmation issue.  We're  
24    here about whether we're entitled to credit bid at the  
25    auction.

1 MR. CHOUDHURI: I was talking about credit  
2 bidding, Your Honor. I was asking about credit bidding --

3 MR. FITZMAURICE: In the plan.

4 THE COURT: I'll sustain the objection. Ask  
5 another question.

6 BY MR. CHOUDHURI:

7 Q Mr. Murray, do you believe there are various exposure  
8 or liability for the Bank of Kuwait with the -- do you  
9 believe the estate has any legitimate claims against the  
10 National Bank of Kuwait?

11 A Yes.

12 MR. TROOP: Sit down and shut up.

13 MR. CHOUDHURI: No further questions.

14 THE COURT: All right. Thank you.

15 All right. Let me go back to Mr. Fitzmaurice.

16 RECROSS-EXAMINATION OF CHRISTOPHER MURRAY

17 BY MR. FITZMAURICE:

18 Q Just one question, Mr. Murray. Have you made an  
19 assessment of the value of those claims?

20 A Yes.

21 Q Sorry. I lied. It's two. What is that assessment  
22 worth?

23 A The value of those claims is something, but it's much  
24 less than what the estate is getting through this plan  
25 process.



1 Q Thank you, Mr. Murray.

2 THE COURT: Mr. Burks?

3 MR. BURKS: May I confer for less than 60 seconds  
4 only?

5 THE COURT: You may have 30 seconds, which is less  
6 than 60 seconds.

7 MR. BURKS: Your Honor, may I?

8 THE COURT: Yeah, with time to spare.

9 REDIRECT EXAMINATION OF CHRISTOPHER MURRAY

10 BY MR. BURKS:

11 Q Mr. Murray, you submitted at Docket Number 452 a  
12 Chapter 11 trustee status report on the marketing process.  
13 Let me make sure you submitted it. Yes, it has been  
14 submitted. We're pulling that up so that you don't have to  
15 remember. First of all, it's kind of late. Secondly, I  
16 wouldn't remember it. I'm talking to fill the time for Mr.  
17 Baker to find the document.

18 Q I'm blushing.

19 MR. BURKS: (indiscernible) pull it down so we can  
20 see the left bullet point in Paragraph 4, Mr. Baker. Thank  
21 you, sir.

22 BY MR. BURKS:

23 Q Review Paragraph 4 before I ask you any questions,  
24 please, Mr. Murray.

25 A Sure. Okay. I've read it.

1 Q You've been a trustee before in other cases?

2 A Yes.

3 Q You've sold property before?

4 A Yes.

5 Q You've sold property with credit bids before?

6 A As a trustee, I don't think so.

7 Q All right. What do you think would happen if these 50  
8 parties who had initiated (indiscernible), the 24 who have  
9 signed the disclosure agreements, and the eight parties who  
10 have conducted onsite inspections, what do you think would  
11 happen if they were sent notices by you saying come to the  
12 auction, there is no credit bidding?

13 MR. FITZMAURICE: Objection, Your Honor, calls for  
14 speculation.

15 THE COURT: I'll sustain the objection. Thank  
16 you.

17 BY MR. BURKS:

18 Q Do you believe that you would have more than one  
19 qualifying bid if there had been no credit bidding.

20 MR. FITZMAURICE: Same objection, Your Honor.

21 THE COURT: I'll sustain the objection. Thank  
22 you.

23 BY MR. BURKS:

24 Q Do you believe you would have more bids if there was no  
25 credit bidding?

1 MR. FITZMAURICE: Same objection, Your Honor.

2 THE COURT: I'll sustain the objection. Thank  
3 you.

4 BY MR. BURKS:

5 Q Is the only way to find out what the effect is on the  
6 bidding of these people who are interested, is the only way  
7 to find out to have no credit bid?

8 MR. FITZMAURICE: Objection, Your Honor, calls for  
9 speculation.

10 THE COURT: I'll sustain the objection.

11 MR. BURKS: Nothing further, Your Honor.

12 THE COURT: Thank you.

13 Mr. Choudhri, back to you. Again, very, very  
14 limited. Do you have anything that you want to add?

15 REDIRECT EXAMINATION OF CHRISTOPHER MURRAY

16 BY MR. CHOUDHURI:

17 Q Mr. Murray, I just want to ask you, so Hilco marketed  
18 the property for approximately three weeks; is that  
19 accurate?

20 MR. FITZMAURICE: I think that's beyond the scope,  
21 Your Honor.

22 THE COURT: I think it's beyond the scope. Again,  
23 you're limited in what you can ask, Mr. Choudhri.

24 BY MR. CHOUDHURI:

25 Q Mr. Murray, do you believe it would be a more fair

1 auction if everybody just was treated equally at the auction  
2 and they had to pay if they bid on the property  
3 (indiscernible) --

4 MR. FITZMAURICE: So objection, Your Honor, calls  
5 for speculation. Also calls for -- it suggests that the  
6 auction is not fair, which I think is inconsistent with the  
7 evidence and the witness' testimony.

8 THE COURT: I'll sustain the objection. Thank  
9 you. Go ahead and ask another question.

10 BY MR. CHOUDHURI:

11 Q Mr. Murray, do you believe the bank wants this  
12 building? They want to own the building?

13 A I don't know.

14 Q They haven't told you one way or the other?

15 A No.

16 Q So if they wanted to buy the building, would you be  
17 supportive if they bid like everybody else?

18 MR. FITZMAURICE: So objection, Your Honor, calls  
19 for speculation. I also think we're beyond the scope.

20 THE COURT: I'll sustain the objection.

21 BY MR. CHOUDHURI:

22 Q Mr. Murray, pursuant to the sale motion, you have  
23 discretion to move the auction date, correct?

24 MR. FITZMAURICE: So objection, Your Honor, both  
25 beyond the scope and not relevant to the bank's credit bid.

1           THE COURT: I'll sustain the objection. But I  
2 will say that I know he's got some ability. So I know that.  
3 I'm always amazed when lawyers ask questions I already know  
4 the answer to. Go ahead.

5           MR. TROOP: He's not a lawyer.

6 BY MR. CHOUDHURI:

7 Q     Mr. Murray, since you were appointed, one of your  
8 suggestions was -- and my suggestion was that since  
9 (indiscernible) control over the estate and the  
10 counterparties being the National Bank of Kuwait and the  
11 other creditors should have a sit-down, and mediation to  
12 work out whatever challenges or issues. Do you recall  
13 having that conversation with me, which included how the  
14 credit bid issues would be dealt with?

15          MR. FITZMAURICE: So objection, Your Honor, both  
16 beyond the scope and not relevant to the credit bid.

17          THE COURT: It's way, way beyond the scope of what  
18 was asked, Mr. Choudhri. So you're going to get one more  
19 question, and then I'm going to tell you to sit down,  
20 please.

21 BY MR. CHOUDHURI:

22 Q     Mr. Murray, would you be openminded to considering what  
23 is the best and pivot your position or decisions based on  
24 what maximizes the value for the creditors in the estate?

25 A     For sure, yes.

1 Q Thank you.

2 A Always.

3 Q Thank you.

4 THE COURT: Thank you.

5 All right. Mr. Fitzmaurice?

6 MR. FITZMAURICE: Nothing further at this time,  
7 although, Your Honor --

8 THE COURT: We've killed a dead horse. Thank you.

9 MR. FITZMAURICE: Your Honor, just to the extent  
10 that we end up putting on a case on this motion, then we  
11 would reserve the right to call Mr. Murray during that case.

12 THE COURT: That's fine. Thank you.

13 All right. Mr. Burks, any other questions based  
14 on what limited questions Mr. Choudhri asked?

15 MR. BURKS: If you ask it that way, and even if  
16 you hadn't, no, Your Honor.

17 THE COURT: Okay. Thank you. Do you have another  
18 witness?

19 Thank you, sir. You may step down.

20 MR. MURRAY: Thank you.

21 MR. BURKS: Your Honor, may I speak with Mr.  
22 Choudhri before I answer that question?

23 THE COURT: Sure. Feel free. Mr. Burks?

24 MR. BURKS: I'm faced with a conundrum. The  
25 principal of my client wants me to call up to three more

1 words. I have been watching Mr. Choudhri. I want this -- I  
2 want him home resting. So I don't know what to do. I mean,  
3 he -- Mr. Choudhri should not be standing in this courtroom  
4 right now. I'm watching the signs of --

5 THE COURT: Mr. Burks, you can either call a  
6 witness or not call a witness. I don't care. I'm here  
7 until we get done. If your client wants you to call  
8 witnesses, call witnesses. I was going to comment that Mr.  
9 Choudhri seems to be doing remarkably well. So I'm not  
10 worried about his health at this point in time.

11 MR. BURKS: I defer to you. Yes, Your Honor. I  
12 have (indiscernible) witness. One moment.

13 THE COURT: Go ahead.

14 MR. BURKS: But, Your Honor, for clarification,  
15 noting prevents Mr. Choudhri from calling any of these  
16 witnesses?

17 THE COURT: That's correct, other than to the  
18 extent he's not represented by a lawyer. He's not doing  
19 himself any favors.

20 MR. BURKS: Thank you for saying that. I hear  
21 you.

22 MAN 1: May I see the witness list, please? Make  
23 sure that the person's on there. Hilco.

24 THE COURT: All right. Mr. Burks, it's time to  
25 call a witness. My patience -- my patience is growing thin.

1 Who do you want to call?

2 MR. BURKS: Your Honor, I'm looking for the name  
3 of the Hilco witness that was identified by NBK, and I'm  
4 looking for that name right now (indiscernible) --

5 MR. BAKER: Kneifel, Kneifel.

6 MR. BURKS: What?

7 MR. BAKER: Kneifel or Kneifel. He was on --

8 MR. BURKS: Kneifel?

9 MR. BAKER: Yeah. K-N-E-I, something. He was on  
10 the Zoom before.

11 MR. BURKS: Right.

12 MR. BAKER: Let's see.

13 MR. BURKS: I call Mr. Kneifel of Hilco, Your  
14 Honor. He was on Zoom before.

15 THE COURT: If he's there, I'm happy to have him  
16 testify. He's not there currently, I don't think.

17 CLERK: K-N-E-I (indiscernible) he's not.

18 THE COURT: Is Steve Madeira online, Tracy?

19 CLERK: Yes, sir.

20 THE COURT: If they want to show up on my screen,  
21 they can show up on my screen.

22 MR. BAKER: Are they there? The Hilco  
23 representative?

24 THE COURT: Mr. Burks, those are the people who  
25 are connected on the line. So if you want to call another



1 witness and try and have someone make arrangements to get  
2 him on GoToMeeting, I'm happy to hear from him. But let's  
3 call someone else. You're wasting my time and everyone  
4 else's time. And everyone's billing at very, very high  
5 rates. Who do you want to call?

6 MR. BURKS: No, Your Honor. Thank you very much.

7 THE COURT: Call a witness.

8 MR. BURKS: I don't -- I don't see the Hilco  
9 witness.

10 THE COURT: Then call another witness. Let's get  
11 it done. Okay. Let's move along. You can get him on the  
12 phone and get him going.

13 MR. TROOP: Your Honor, just to be perfectly  
14 clear, we identified Hilco as a witness with a notice to  
15 produce. I don't believe that Mr. Choudhri filed anything  
16 with a notice to produce.

17 THE COURT: If he's not here under a subpoena, I  
18 can't make him testify.

19 MR. TROOP: And I don't think there's a subpoena.

20 THE COURT: Okay.

21 MR. TROOP: I don't know. If no one tells me when  
22 they serve subpoenas, Your Honor (indiscernible) --

23 THE COURT: Okay.

24 MR. BURKS: Your Honor, I have no other witness  
25 available that I can call.

1 THE COURT: All right. That's fine.

2 Okay. So Mr. Choudhri, do you have a witness you  
3 want to call?

4 MR. CHOUDHURI: (indiscernible) try to get on  
5 (indiscernible) --

6 THE COURT: Okay. So who are you calling first of  
7 all?

8 MR. CHOUDHURI: Thomas Phillips.

9 THE COURT: Thomas Phillips?

10 MR. CHOUDHURI: Yes.

11 THE COURT: I'll give you a few minutes to see if  
12 you can get him to connect.

13 MR. BURKS: Your Honor, while we wait, I want to  
14 acknowledge the bench and thank you for the patience you  
15 just showed me.

16 THE COURT: Not needed. Thank you.

17 Mr. Choudhri, I need you to call a witness. We're  
18 not going to sit here and wait. Do you have someone else  
19 you want to call?

20 MR. CHOUDHURI: (indiscernible) Phillips is just  
21 logging in.

22 THE COURT: Do you have another witness past Mr.  
23 Phillips?

24 MR. CHOUDHURI: Yes, Your Honor.

25 THE COURT: Then you need to get him on the -- get

1 him on the horn so we won't have to wait. Okay.

2 MR. CHOUDHURI: I call Mr. Charles Conrad.

3 THE COURT: Mr. Conrad, come on forward. I'll  
4 swear you in. Please raise your right hand to be sworn. Do  
5 you swear or affirm to tell the truth, the whole truth and  
6 nothing but the truth, so help you God?

7 MR. CONRAD: I do.

8 THE COURT: All right. Please be seated, sir.

9 Mr. Choudhri, come on up. Start. Let's go.

10 DIRECT EXAMINATION OF CHARLES CONRAD

11 BY MR. CHOUDHURI:

12 Q Good evening, Mr. Conrad.

13 A Good evening.

14 Q Do you represent the National Bank of Kuwait?

15 A Correct.

16 Q And all actions you've taken in relation to this case  
17 or the state court or the federal court cases in the  
18 capacity as a representative and attorney for the National  
19 Bank of Kuwait, right?

20 MR. FITZMAURICE: Objection, Your Honor, relevance  
21 to the whether the bank's entitled to credit bid at the  
22 auction tomorrow.

23 THE COURT: It's preliminary. We'll get there.  
24 That's fine. I'll overrule the objection as to preliminary  
25 matters.

1                   Go ahead, Mr. Conrad.

2                   THE WITNESS: The answer is yes.

3   BY MR. CHOUDHURI:

4   Q     Mr. Conrad, are you aware who Paul Caldwell is?

5   A     I don't know who he is.

6   Q     Have you ever spoken to Paul Caldwell?

7   A     I have not.

8   Q     You've never had a conversation with Paul Caldwell?

9   A     I've never had a conversation with Paul Caldwell.

10   Q     Any email communication?

11   A     I have had emails with I recall, like, his assistant.

12   Q     But he never emailed you?

13   A     Not that I'm aware of, but I don't recall exactly. I  
14   do remember emails trying to schedule a call.

15   Q     Were you aware of that Pillsbury represents Paul  
16   Caldwell.

17   A     I'm not aware of that.

18   Q     Did you ever represent that in state court, that the  
19   settlement agreement does not exist?

20   A     I don't understand the context of your question, but  
21   the settlement agreement is a document that does exist.

22   Q     I believe it's been made as an exhibit to this case.

23   Mr. Conrad, are you familiar with the June 12th hearing that  
24   took place.

25   A     Generally.

1 Q Did you represent to the state court, Judge Weems --  
2 let me back up. Mr. Conrad, were you there in March at a  
3 meeting with Judge Weems' court in March of 2022 when the  
4 temporary injunction was entered in favor of the debtor.

5 A Yes.

6 Q And what was the outcome of that injunction hearing?

7 A A temporary restraining order was granted, that the  
8 case was put on an accelerated trial schedule where we were  
9 preferentially set, I believe, at the beginning of September  
10 of 2023, September 6th, I believe. And then a bond was  
11 required to be posted in conjunction with a temporary  
12 injunction.

13 Q You were here earlier from Mr. Wetwiska's testimony,  
14 right?

15 A Yes.

16 Q In fact, I believe you cross-examined him.

17 A Yes.

18 Q Mr. Conrad, I would like you to look at Page 59. I'll  
19 represent to you, this is Page 59. Now I'm going to go to  
20 the bottom of Page 59, Line 22.

21 A Okay.

22 Q Can you read that into the record, your statement?

23 A Well, it looks like it's partial, with Lines 22 to 25,  
24 but it says:

25 "Mr. Conrad: Your Honor, I'm sorry. I completely

1 understand that. I just want to make sure that, like again,  
2 it can't be part of the 2023, you know, contract claim  
3 because the settlement agreement doesn't exist anymore. The  
4 court didn't extend the," there's a redaction, the  
5 settlement agreement.

6 Q So you're telling the court -- do you know who DC  
7 Partners is?

8 A Generally.

9 Q Are you aware that they're a tenant I was able to put  
10 into the building to take the entire seventh floor?

11 A I'm not aware of that.

12 Q Have you seen the DC Partners' lease I presented to you  
13 at any time?

14 A I generally know who DC Partners is, but I don't know  
15 that any lease has a DC Partners name on it.

16 Q Would it be fair to say -- or I think you understand  
17 that that is a name, another name of the entity is also  
18 known as St. Christopher Holdings?

19 A I don't know that.

20 Q What is the reason that a loan sale agreement was never  
21 provided or requested?

22 MR. FITZMAURICE: Objection, Your Honor.  
23 Objection, Your Honor, lacks foundation, mischaracterizes  
24 the evidence. We saw an exhibit that in fact sent one.

25 THE COURT: I'll sustain the objection.

1 BY MR. CHOUDHURI:

2 Q Did Mr. Wetwiska ask you for a loan sale agreement in  
3 2023?

4 A And we've looked at the documents. There was a June  
5 28th correspondence where, for the very first time, Mr.  
6 Wetwiska asked for certain documents in advance of a July 3,  
7 2023 date deadline that was given by the court in extending  
8 the time for performance for you and/or any other purchaser  
9 to perform the settlement agreement, which we did. We  
10 produced those documents.

11 Q Were those the final loan sale documents?

12 A I don't know what you mean by final.

13 Q We have a final set of closing documents. This is what  
14 the bank will agree to. This is final. Here it is. Was  
15 that ever provided?

16 A Well, I still don't understand the question because, if  
17 I may explain, when you say final, that would mean that you  
18 --

19 MR. CHOUDHURI: I object. I object to  
20 nonresponsive.

21 THE WITNESS: Well that might mean that you have  
22 to agree to all them too. We held nothing back from any of  
23 your attorneys, you, anyone in response to those documents  
24 being sent other than to hear, ask for additional time if  
25 the bank would agree to yet another request from your side

1 from an extension.

2 MR. CHOUDHURI: Objection, nonresponsive.

3 THE COURT: I'll overrule the objection.

4 BY MR. CHOUDHURI:

5 Q So when you say the settlement agreement doesn't exist  
6 as of June 12, 2023, what do you mean by that?

7 A The time for performance of the settlement agreement,  
8 as Mr. Wetwiska testified earlier, which shouldn't be in  
9 dispute, is March 20, 2023. There were 210 days that the  
10 settlement agreement provided for performance. It did not  
11 perform. It was on you and or whoever on behalf of your  
12 team (indiscernible) did not perform within that date. And  
13 so when we say from the existence, there is no additional  
14 time for performance. We objected on behalf of the National  
15 Bank of Kuwait in the state court's ruling extending the  
16 time for performance. We are -- but if you're asking me  
17 what the existence of this non-existence is, there are no  
18 rights on behalf of the debtor, Galleria 2425 Owner, LLC to  
19 enforce the terms of the settlement agreement. The only  
20 rights are for the bank as a result of the default.

21 MR. CHOUDHURI: Your Honor, nonresponsive.

22 THE COURT: I think he's being responsive. You  
23 just don't like his response, unfortunately. But he's  
24 responsive. I'll overrule the objection.

25 BY MR. CHOUDHURI:



1 Q Mr. Conrad, wouldn't be care to say there is a dispute  
2 over the settlement agreement?

3 A No.

4 Q There's no dispute over the settlement agreement?

5 A The dispute maybe is that you don't maintain that  
6 you're in default, which you clearly are.

7 Q So there's no dispute that the bank committed the first  
8 material breach or fraud in the inducement in entering into  
9 the settlement agreement?

10 A That I disagree with. There's absolutely no evidence  
11 to support any claim based on your claim for breach of  
12 contract of the settlement agreement. There's nothing.

13 Q That's according to you, but there's two sides to it.  
14 Are you aware that Paul Caldwell made an offer for \$75  
15 million for the building?

16 A No.

17 Q Are you aware that he made any offer?

18 A I don't know. No, I'm not aware. Because of that  
19 document was prepared by one of your lawyers, Seth  
20 Nichamoff, who appeared at the state court proceeding, it  
21 has an electronic signature on behalf of Mr. Caldwell. I  
22 don't know what that is. It's a document that you did not  
23 produce, you did not attach to any of your complaints or  
24 original complaints in the state court litigation. It  
25 wasn't until much later that I first saw that document. But

1     again, I don't know what that is, other than it's  
2     purportedly something that you contend is an offer.

3     Q     So the Bank of Kuwait has a claim here, and this is the  
4     -- this court or this bankruptcy case is where they're  
5     attempting to pursue the amount that they contend their  
6     owed, right?

7     A     Yes.

8     Q     Anywhere else?

9     A     That action, I think, I believe has been removed. That  
10    was then the adversary proceeding. There was a counterclaim  
11    asserted against the debtor in the state court litigation.

12    Q     So outside of this court, in Judge Norman's case, the  
13    only other place that the Bank of Kuwait is pursuing money  
14    related to the note is in the adversary that was removed or  
15    the state court case that was removed?

16    A     I'm not sure about that, but I don't think so. I'm not  
17    certain about that.

18    Q     Is there any avenue or any source or pursuit of claims  
19    that the Bank of Kuwait is pursuing outside of Judge  
20    Norman's court or Harris County district court?

21                 MR. FITZMAURICE: Objection. Mr. Conrad clearly  
22    doesn't need my help, as Your Honor can see. But this is  
23    not relevant to the issue of whether the bank can credit bid  
24    at the auction tomorrow.

25                 THE COURT: I'll sustaining the objection as to

1 relevance. Thank you.

2 MR. CHOUDHURI: I just want to understand there's  
3 no other -- I'm almost there, Your Honor. I really have to  
4 know this --

5 THE COURT: It's not relevant to credit bidding,  
6 so he doesn't have to answer it. Thank you. Move on.

7 BY MR. CHOUDHURI:

8 Q Has the Bank of Kuwait filed a lawsuit in New York for  
9 \$70 million to pursue its claims under the settlement or  
10 under the note, the deed of trust?

11 A There is a lawsuit that's pursuant to the guarantee  
12 that was against Brad Parker in New York. That has been  
13 filed.

14 Q Has that been disclosed to this court?

15 A I'm not aware (indiscernible).

16 Q Was it in any kind of disclosure? So you're not aware.

17 MR. FITZMAURICE: So Your Honor, relevance to  
18 credit bidding.

19 THE COURT: I'm struggling with relevance, Mr.  
20 Choudhri.

21 MR. CHOUDHURI: Your Honor, It's a lack of  
22 disclosure. They're pursuing -- they're talking both sides.  
23 They're saying the settlement agreement, the releases are  
24 good. We can't talk beyond that. But yet they're suing the  
25 guarantors that they've released the guarantors.

1                   THE COURT: I'll sustain the objection. Thank  
2     you. Move on.

3     BY MR. CHOUDHURI:

4     Q     Have you ever have any communication with Security  
5     State Bank of Texas.

6     A     I don't recall having any direct communications with  
7     them.

8     Q     Are you aware that they were a lender to take out the  
9     loan that NBK agreed to sign under the settlement agreement?

10    A     I'm aware that Mr. Wetwiska represented that as such,  
11    but I don't have any personal knowledge of that.

12    Q     Do you recall asking Mr. Wetwiska and Gene Meyers at  
13    Security State Bank that if they were big enough to make  
14    this loan?

15           MR. FITZMAURICE: Objection, Your Honor, relevance  
16    to the credit bidding.

17           MR. CHOUDHURI: It's, Your Honor -- it goes to the  
18    prevention of the debtor, myself, taking out the financing  
19    and interfering with this process. It goes to good faith.

20           THE COURT: I'll allow the question. Go ahead.

21           THE WITNESS: Will you ask the question again.  
22    I'm sorry.

23    BY MR. CHOUDHURI:

24    Q     Do you recall having conversations with Gene Meyers  
25    regarding 2425?

1     A     If you scroll back up to the screen at the top of the  
2     email chain, I remember exactly what Mr. Meyers tells me  
3     being the case. I remember that you and/or met with Mr.  
4     Wetwiska asked him to reach out to me, not the other way  
5     around. And so --

6     Q     (indiscernible)

7     A     -- he states here, he says, Mr. Conrad, good afternoon.  
8     Ali had requested an update on this loan request and  
9     (indiscernible) --

10           MR. CHOUDHURI: Objection (indiscernible) --

11           THE WITNESS: -- share with you, so it was given  
12     to me.

13           MR. FITZMAURICE: So Your Honor, I also object the  
14     use of this document. It's not clear that it's on any list.

15           THE COURT: It's not in evidence at this point in  
16     time. So go ahead.

17     BY MR. CHOUDHURI:

18     Q     And I put it on here because you said there's no  
19     communications that you've (indiscernible) --

20     A     That is not how I understood your question.

21     Q     Are you aware of offers received by the Bank of Kuwait  
22     since the filing of this case?

23     A     What do you mean by offers?

24     Q     Offers to buy the note or buy the property.

25           MR. FITZMAURICE: So objection, Your Honor, the

1 bank can't sell the property. But also what's the relevance  
2 to the credit bidding?

3 THE COURT: Sustain the objection as to relevance.

4 BY MR. CHOUDHURI:

5 Q Has the bank received any offers to sell its note?

6 MR. FITZMAURICE: Same objection, Your Honor.

7 THE COURT: I'll sustain the objection as to  
8 relevance.

9 BY MR. CHOUDHURI:

10 Q Under the settlement agreement, once the bank gets paid  
11 \$26 million, what happens to the tax liens that it holds?

12 A Well again, this goes back to assuming that it was paid  
13 within the 210 days originally and then extended by the  
14 state court judge on or before July 3rd, which never  
15 happened. So I don't know that I need to answer that  
16 question because all of that time has expired and so those  
17 tax liens were assigned to the bank and there is a default  
18 by you of the settlement agreement.

19 Q Is the bank's position to settlement agreement is  
20 rescinded or still valid?

21 MR. FITZMAURICE: Objection, Your Honor,  
22 relevance.

23 THE COURT: I'll sustain the objection. It's not  
24 relevant to credit bidding. Thank you.

25 BY MR. CHOUDHURI:

1 Q Did anybody from the bank tell potential buyers of the  
2 property that the property was going to be foreclosed in the  
3 near future?

4 MR. FITZMAURICE: Objection, Your Honor, vague as  
5 to time.

6 BY MR. CHOUDHURI:

7 Q 2023.

8 THE COURT: Overruled.

9 THE WITNESS: So going back to March 20th of 2023,  
10 there was no payment made. There was a default letter  
11 issued approximately seven --

12 MR. CHOUDHURI: Objection (indiscernible) --

13 THE COURT: You asked the question. He can answer  
14 it. Go ahead.

15 THE WITNESS: know what your question is asking,  
16 so I'm going to answer it. And so after a week of following  
17 no performance of March 20th, we issued a notice of  
18 foreclosure for the May 6th, whatever the first Tuesday was,  
19 in May 6, 2023. Subsequent to that, we filed a motion to  
20 appoint a receiver to the property. Shortly before the oral  
21 hearing of a motion to appoint receiver, you filed yet  
22 another lawsuit claiming breach of the settlement agreement  
23 regarding the Paul Caldwell issue. At that hearing on April  
24 12th, the court then entered into that order extending the  
25 time for performance of the settlement agreement until July

1 3rd. At that point in time, you've now made the argument  
2 that the time for performance of the settlement agreement  
3 was in existence from March 20th to April 12th. And you  
4 claimed that our notice, which we placed publicly, which we  
5 were entitled to do under the settlement agreement,  
6 constituted telling people that we were going to foreclose  
7 on the property, which I think is entirely what we're  
8 entitled to do.

9 BY MR. CHOUDHURI:

10 Q So I think we're conflating things. I just want to  
11 make sure the question -- your answer is accurate. The  
12 state court enjoined you from going forward and foreclosing  
13 on the property in 2023, correct?

14 A On May 6th.

15 Q And you were volleying phone calls from the buyers,  
16 potential buyers who were contacting your agent, the  
17 trustee, correct? I can pull the emails. Maybe it's  
18 easier.

19 A I don't know what you mean by trustee, but at this  
20 timeframe --

21 Q There's a substitute trustee that is listed on your  
22 foreclosure notice, right?

23 A Yes.

24 Q And that substitute trustee has to post the property 21  
25 days before the first Tuesday of the month, right?



1 A Correct.

2 Q And when the court tells NBK they must pass their sale  
3 and not go forward with it, or the court tells NBK to not go  
4 forward with their sale, correct?

5 A Still understand what you're talking about. Which  
6 sale?

7 Q The property was posted for foreclosure in 2023.

8 A Several times.

9 Q In May or June?

10 A Not June.

11 Q So when it was posted, it was posted in May then?

12 A As I was stating earlier, from the time period of March  
13 20th, when the time for performance ended then after the  
14 default notice was issued, a notice of foreclosure was  
15 issued, I believe, and I'm going to estimate here, around  
16 March 26th, 27th, something like that. It's in that  
17 timeframe, and that it wasn't until after April 12th that  
18 there was a hearing where you were requesting a temporary  
19 restraining order, and the court ultimately decided to  
20 extend the time for performance, take down our notice of  
21 foreclosure but recognizing that the bank had the right to  
22 reissue the notice of foreclosure for a July 3rd, excuse me,  
23 July 5th foreclosure bid, which we did, and the court  
24 specifically authorized us to issue that notice for the July  
25 5th setting. And that --

1 Q My question --

2 A Go ahead.

3 Q Yeah. My question is, and I can pull it up just in a  
4 second, this. My question is this, Mr. Conrad. When the  
5 court enjoined you from foreclosing and the Bank of Kuwait  
6 was getting phone calls after the sale had been passed, the  
7 sale had been passed for May, correct?

8 A Yes, that's directed by the court.

9 Q And once that had happened and the Bank of Kuwait was  
10 getting phone calls, there was communication that I've seen,  
11 and I'll put it on here, where the Bank of Kuwait was  
12 telling the potential bidders that we're going to foreclose  
13 in the future, we're going to post in the future. Do you  
14 recall that?

15 A Not exactly how you stated.

16 Q How do you recall what was said in those  
17 communications, and I'll pull them up in a second.

18 MR. FITZMAURICE: Your Honor, maybe that's the  
19 best thing for us to do rather than --

20 THE COURT: Sure.

21 BY MR. CHOUDHURI:

22 Q I want to go back to one thing. You said you never  
23 spoke to Mr. Caldwell, right?

24 A I don't recall ever speaking to him.

25 Q Mr. Conrad, is your email charles.conrad@pillsbury?

1 A It is.

2 Q Is this an email on February the 2, 2023, that you  
3 received from Paul Caldwell?

4 A If you'll scroll down?

5 Q It says, Mr. Conrad, we spoke briefly last week  
6 regarding my firm's interest in acquiring a note from the  
7 Bank of Kuwait. I believe the bank holds the senior secured  
8 position. I'd like to have a discussion with the bank  
9 concerning acquisition. Thanks for your consideration.

10 A Sorry. What was the question?

11 Q Earlier you testified you never spoke to Mr. Caldwell,  
12 right?

13 MR. FITZMAURICE: Objection, Your Honor,  
14 mischaracterizes the witness' testimony.

15 THE COURT: I'll sustain the objection.

16 BY MR. CHOUDHURI:

17 Q Does this refresh your recollection, Mr. Conrad?

18 A No.

19 Q So did you speak to Mr. Caldwell after looking at the  
20 email?

21 A I don't have any recollection of speaking with him, my  
22 memory as of today. I remember trying to schedule a call  
23 with him. I remember, I believe potentially, but I think  
24 everything was with his assistant, Jennifer Garcia, or  
25 whoever her name was or his name.

1 Q Who is Hugh Ray? Is he with your firm?

2 A Which Hugh Ray?

3 Q Pillsbury.

4 A Yes, there is a Hugh Ray that works at Pillsbury.

5 Q And you're not aware if Mr. Caldwell is a client of  
6 Pillsbury or not?

7 MR. FITZMAURICE: Objection, Your Honor, asked  
8 unanswered. Relevance. Now we're going to cast aspersions  
9 on some other person who's not here?

10 THE COURT: What's the relevance?

11 MR. CHOUDHURI: Your Honor, the relevance is it  
12 goes to the information, the contracts with Mr. Caldwell and  
13 the bank saying they didn't get things that they did get, or  
14 communications. And it circles back to offers and leases  
15 that were sent to the bank that they claim they never got.  
16 And it's just --

17 MR. FITZMAURICE: Your Honor, there's no proof of  
18 any of that that's been offered.

19 THE COURT: I'll sustain the objection. Thank  
20 you.

21 BY MR. CHOUDHURI:

22 Q Are you aware of Bruce Merwin? Do you know who Bruce  
23 Merwin is?

24 A No.

25 Q Do you know who Holland & Knight is?

1       A       Yes.

2       Q       Did anybody from your firm relating to this transaction  
3       receive leases and proposals and sales contracts from  
4       Holland & Knight?

5               MR. FITZMAURICE:  Objection, Your Honor, relevance  
6       to the bank's ability to credit bid at the auction tomorrow.

7               THE COURT:  Again, what's your relevance?

8               MR. CHOUDHURI:  Your Honor, if they have been  
9       acting in bad faith and thwarting the efforts of myself, the  
10      debtor, and not frustrating performance, then I think that  
11      goes to good faith.  It goes to their bad faith and  
12      interfering so they can create a situation where they can  
13      credit bid.  They should not be rewarded.  The reason the  
14      debtor is in bankruptcy --

15              THE COURT:  I'm going to sustain the objection.  
16      Thank you.  Go ahead.

17      BY MR. BURKS:

18      Q       Are you aware that -- this is Exhibit 18?

19              MR. FITZMAURICE:  I apologize.  Can we get an ECF  
20      number for that?  Exhibit 18 to what?

21              MR. CHOUDHURI:  499-18.

22              THE WITNESS:  Sorry.  What was the question?

23              MR. CHOUDHURI:  I'd like to go back for a second,  
24      Your Honor, if it's okay.  Could I move to admit this email  
25      from Paul Caldwell to Charles Conrad?

1           MR. FITZMAURICE: So objection, Your Honor, on  
2     authenticity grounds. We have no way to know if that's Mr.  
3     Paul Caldwell's email, if this was actually sent by him.  
4     There's no foundation for that. We have no basis --

5           THE COURT: I'll let you try and lay a foundation.  
6     But I'm going to sustain the objection.

7     BY MR. CHOUDHURI:

8     Q     Mr. Conrad, do you recognize your email address on this  
9     document, Document 498-6, Page 3 of 3?

10    A     Yes.

11           MR. CHOUDHURI: I move to admit this email.

12           MR. FITZMAURICE: Same objection, Your Honor.

13           THE COURT: I don't think that gets you there. In  
14     fact, I know it doesn't get you there. You've got to do  
15     something else.

16     BY MR. CHOUDHURI:

17     Q     Did you receive this email, Mr. Conrad?

18     A     Again, I don't remember. I did have emails with Mr.  
19     Caldwell's assistant about scheduling something, but I don't  
20     recall this one, just by looking at it.

21     Q     Mr. Conrad, you're aware that there was a discovery  
22     request made for communications between the Bank of Kuwait  
23     and Mr. Caldwell?

24           MR. FITZMAURICE: Objection, Your Honor. In what  
25     case? In what context? At what time?

1 MR. CHOUDHURI: In this case, on the 30(b)(6).

2 MR. FITZMAURICE: Well, if that's true, Your  
3 Honor, then there's a document that would show that.

4 THE COURT: Yes. So if you've got something, show  
5 it to me. Thank you.

6 MR. CHOUDHURI: I would like to bring the court to  
7 judicially recognize there's a motion for contempt filed in  
8 this case, Your Honor. I'd like you to have that document.  
9 That has an attachment of the notice of the 30(b)(6) with  
10 the communications. But I can come back to these questions  
11 (indiscernible).

12 BY MR. CHOUDHURI:

13 Q Mr. Conrad, are you aware that Paul Caldwell signed a  
14 CA and an NDA with Ali Choudhri?

15 A No.

16 Q Mr. Conrad, have you seen this document before?

17 A Yes.

18 MR. CHOUDHURI: I'd like to move to admit this  
19 document, Your Honor.

20 MR. FITZMAURICE: Your Honor, objection as to lack  
21 of foundation and authenticity. There's what appears to be  
22 a typed in and script name Paul Caldwell, but there's no  
23 indication as to whether or not he actually signed it, how  
24 that signature got there, where it came from, or anything  
25 else that would be needed to show the authenticity of the

1 document.

2 THE COURT: I'll sustain the objection as to lack  
3 of foundation.

4 BY MR. CHOUDHURI:

5 Q So you said you've seen this document. Do you recall  
6 when you've seen it?

7 A Yes. It's one of your exhibits that you're trying --  
8 that you listed as an exhibit that you might use. That's  
9 how I saw it.

10 Q And can you read what --

11 THE COURT: It's not in evidence. He can't read  
12 from it.

13 BY MR. CHOUDHURI:

14 Q Mr. Conrad, do you have the information relating to  
15 leases or contracts or offers -- do you have any knowledge  
16 of any offers or leases that the Bank of Kuwait received?

17 MR. FITZMAURICE: So Your Honor, we'll ignore the  
18 compound portion of that, but relevance to the issues.

19 THE COURT: Mr. Choudhri, what's the relevance?

20 MR. CHOUDHURI: Bad faith. Suppression of value  
21 to come and benefit from a credit bid. That they should be  
22 rewarded for their actions of --

23 THE COURT: I'll sustain the objection. Thank  
24 you.

25 BY MR. CHOUDHURI:



1 Q Do you know who Keith Maxwell is, Mr. Conrad?

2 A No.

3 Q Newdevco?

4 A No.

5 Q You know who Bobby Salah is?

6 A I do not.

7 Q Or Lawrence Perry?

8 A I'm sorry. What was the last name?

9 Q Lawrence Perry.

10 A I don't know.

11 Q Do you recall participating in the mediation of Edina  
12 Marshall?

13 A Yes.

14 Q And at that mediation, do you recall this was at the  
15 end of June 2023. Is that accurate?

16 MR. FITZMAURICE: The timing of the mediation is  
17 whatever it is, but relevance to the issues --

18 THE COURT: Again, relevance.

19 MR. CHOUDHURI: It's to consummate the transaction  
20 that has been being attempted to consummate where the bank  
21 has interfered with that consummation.

22 THE COURT: I'm going to sustain the objection as  
23 to relevance. Thank you.

24 BY MR. CHOUDHURI:

25 Q Mr. Jeffrey Gilman.

1 A Jeffrey Gilman is an attorney in Houston.

2 Q Is he the trustee and attorney for National Bank of  
3 Kuwait?

4 A He was a substitute trustee.

5 Q Are you aware that he told third parties that there  
6 would be a foreclosure in the future?

7 MR. FITZMAURICE: So objection, Your Honor,  
8 hearsay. But also if there's a document that says that,  
9 let's take a look at it.

10 THE COURT: I'll sustain the objection as to  
11 hearsay.

12 BY MR. CHOUDHURI:

13 Q Did you receive an email from -- was there a dispute  
14 between the Bank of Kuwait and the debtor as it related to  
15 posting of the property?

16 A I don't understand the question.

17 Q Was there any dispute between NBK and the borrower in  
18 relation to the posting of the property for foreclosure?

19 A I still don't understand. I mean, you're asking me to  
20 tell you whether or not you thought that there was a dispute  
21 because the bank moved to foreclose the property to enforce  
22 its right under the loan agreement and the loan documents.  
23 Did the borrower, now debtor, try to contest it at every  
24 single which way, basically six ways from Sunday? Yes. To  
25 delay that process? Yes. So does that answer your

1 question? That's the best I understand it.

2 Q Was there a dispute between you and Jim Wetwiska, as it  
3 relates to the court's ruling for the posting of the  
4 foreclosure?

5 MR. FITZMAURICE: Your Honor, objection. I think  
6 this is a version of the same question. So it's been asked  
7 and answered. It's also not relevant to whether the bank  
8 can credit bid.

9 THE COURT: I'll sustain the objection as to  
10 relevance.

11 BY MR. CHOUDHURI:

12 Q If the bank is successful as a credit bidder, what is  
13 it acquiring at the sale? The real estate and anything  
14 else, or just the real estate?

15 MR. FITZMAURICE: Objection, Your Honor. The bid  
16 procedure in the stalking horse agreement, they all speak  
17 for themselves as to what is being sold in the auction.

18 THE COURT: I'll sustain the objection. Thank  
19 you.

20 BY MR. CHOUDHURI:

21 Q Do you have any knowledge of who or what entity owns  
22 the FF&E in the building?

23 A I'd have to go back and look at the loan agreement and  
24 the loan documents. I don't know the answer.

25 Q Are you aware that Stage Stores had filed bankruptcy?

1 A Yes.

2 Q And are you aware that they have sold all of the FF&E  
3 in the building?

4 MR. FITZMAURICE: Objection, Your Honor, relevance  
5 to the credit bidding.

6 THE COURT: I'll sustain the objection. It's not  
7 relevant to credit bidding.

8 BY MR. CHOUDHURI:

9 Q Is the bank's expectation on a credit bid that they're  
10 obtaining the FF&E in the building?

11 MR. FITZMAURICE: Your Honor, it's the same  
12 question as before.

13 THE COURT: It's not relevant. Move on. Thank  
14 you.

15 BY MR. CHOUDHURI:

16 Q Is this an email you received, Mr. Conrad, from Jim  
17 Wetwiska on May the 4th, 2023?

18 A I don't know. It could be.

19 Q Is this your email address on here?

20 A Yes.

21 MR. CHOUDHURI: I'd like to move to enter this  
22 document, Your Honor.

23 THE COURT: What's the ECF number?

24 MR. CHOUDHURI: I don't have the ECF number on me.  
25 It goes to his earlier statements that --

1 THE COURT: It has to be an ECF in order to be  
2 admitted. If it's not on ECF, I can't admit it because  
3 everything's electronic.

4 BY MR. CHOUDHURI:

5 Q Mr. Conrad, can you confirm this is an email you  
6 received?

7 MR. FITZMAURICE: So that question's been asked  
8 and answered, Your Honor.

9 THE COURT: I'll sustain the objection.

10 MR. CHOUDHURI: May I ask him questions about the  
11 email?

12 THE COURT: Sure. I'm just saying I can't admit  
13 it because it's not on ECF.

14 BY MR. CHOUDHURI:

15 Q What is the date of this email?

16 A It purports to be May 4, 2023.

17 Q What time?

18 A 2:51 p.m.

19 Q Would you read the first paragraph, please?

20 MR. FITZMAURICE: Your Honor, the email is not in  
21 evidence. Having Mr. Conrad read it is a way to --

22 THE COURT: The only reason it's not in evidence  
23 is because I can't admit it. I'll let him -- I don't have  
24 any problem with him testifying. I'm not sure what it's  
25 relevant to at this point in time. But go ahead, answer the

1 question.

2 THE WITNESS: Can you scroll down to the email,  
3 the rest of the chain? Stop. Go back to mine. Skip that  
4 over it again.

5 THE COURT: Go one up.

6 THE WITNESS: Yeah. I need to read the whole  
7 chain.

8 THE COURT: Right there. Stop there.

9 THE WITNESS: All right. If you could scroll down  
10 a little bit. Yeah.

11 BY MR. CHOUDHURI:

12 Q So the state court, and I can pull up the transcript,  
13 but do you recall Judge Weems in the state court telling  
14 you, you should not be telling people calling you that  
15 you're going to post in the future?

16 A At the beginning, where this email chain starts from is  
17 that there was a bond requirement by the state court judge  
18 for you to pay \$80,000 per month. There was a question that  
19 we asked for purposes of securing performance of that  
20 \$80,000 a month and whether or not we would post, could  
21 post. And there was a disagreement by Mr. Wetwiska of  
22 saying that. And that was later discussed in a status  
23 conference with the court saying, look, if they make the  
24 \$80,000 payments up until July 3rd, you cannot post. But up  
25 until July -- excuse me, until June, you can post for the

1 July 5th setting, which is what she ordered. So there was  
2 clarity of saying, look, as long as they're making the  
3 \$80,000 payments, which you did from April and May, but not  
4 June, you could post, you could not post. So that's what I  
5 recall.

6 Q But so the issue was telling the bidders, the potential  
7 bidders, once the judge said you could not post and you had  
8 to pass the sale and allow the bidder to perform, NBK's  
9 agents continued to tell the bidders that there will be a  
10 posting in the future, true or false?

11 MR. FITZMAURICE: Objection, Your Honor, assumes  
12 facts not in evidence.

13 THE COURT: I'll sustain the objection. Thank  
14 you.

15 BY MR. CHOUDHURI:

16 Q Do you know who Osama Abdullatif is?

17 A No.

18 Q Do you know who Rodney Drinnon is?

19 A I know who he is, yes.

20 Q You've had conversations with him?

21 A I don't recall any other than kind of he was at  
22 hearings where I was present, but I don't recall any other  
23 conversations that I've had with him, other than at court  
24 hearings.

25 Q Are you aware of how this loan came to be and how the

1 structure was organized?

2 MR. FITZMAURICE: Objection, Your Honor, relevance  
3 to the credit budding.

4 THE COURT: I don't even know what loan we're  
5 talking about. So, but I'll sustain the objection.

6 BY MR. CHOUDHURI:

7 Q Mr. Conrad, how will the bank be impaired in any way if  
8 it's not allowed to credit bit?

9 MR. FITZMAURICE: Objection, Your Honor. That's  
10 not a relevant issue for whether or not the bank  
11 (indiscernible) --

12 THE COURT: I'll sustain the objection. Thank  
13 you.

14 BY MR. CHOUDHURI:

15 Q So Mr. Conrad, whatever representations were made by  
16 both sides in varying courts, whether it's by NBK or by  
17 debtor or myself, you would stand by those as far as if any  
18 representations were made by two courts? Again, we don't  
19 have all the transcripts here today, but if the  
20 representation is made by NBK to varying courts, you would  
21 stand by those are we sit here today.

22 MR. FITZMAURICE: So I'm going to object to the  
23 question, Your Honor, as I understand that he's asking if  
24 there is evidence that's not before the court, that's not  
25 part of the record of this hearing. I don't know what



1 relevance it has to the hearing. There are exhibits that  
2 are being offered here into evidence or not. That's what  
3 we're here focused on. So objection on that.

4 THE COURT: I'll sustain the objection. Ask  
5 another question, please.

6 BY MR. CHOUDHURI:

7 Q Mr. Conrad, you participated in the drafting of the  
8 settlement agreement, true?

9 A Yes.

10 Q So you made your edits and changes in redlines and back  
11 and forth with Mr. Wetwiska, right?

12 A Among others. Yes.

13 Q Who was the others?

14 A Nick Houpt was an associate of Mr. Wetwiska  
15 (indiscernible).

16 Q So as we sit here today, are the releases effective in  
17 the settlement agreement?

18 MR. FITZMAURICE: Your Honor, objection. I know  
19 that Mr. Conrad has a view as to the legal answer to that  
20 question, but it calls for a legal conclusion which is for  
21 Your Honor. And also it's not relevant for purposes --

22 THE COURT: I'll sustain the objection as to  
23 relevance.

24 BY MR. CHOUDHURI:

25 Q Mr. Conrad, we're not here today to try this case as it

1 relates to the dispute with the debtor, Ali Choudhri and the  
2 Bank of Kuwait, right?

3 A I don't know how to answer that question. I don't know  
4 what you are thinking.

5 Q You believe today is going to lead to an adjudication  
6 of the dispute between the Bank of Kuwait and the debtor and  
7 Ali Choudhri?

8 MR. FITZMAURICE: Objection, Your Honor. We're  
9 here on the motion to preclude the bank from credit bidding.

10 THE COURT: I'll sustain the objection. I know  
11 why we're here. Why he thinks we're here, again, I don't  
12 really care. And again, I'm going to tell you to move along  
13 because we now have reached a point where I have given you a  
14 lot of leeway. But we're not getting very far.

15 BY MR. CHOUDHURI:

16 Q Within a couple of weeks of the trustee being appointed  
17 -- let me back up. When was the first meeting the Bank of  
18 Kuwait had with the trustee or its representatives?

19 A I don't remember.

20 Q When did the Bank of Kuwait want JLL to take over  
21 management?

22 MR. FITZMAURICE: Objection, Your Honor, assumes  
23 facts not in evidence.

24 THE COURT: I'll sustain the objection. Thank  
25 you.

1 BY MR. CHOUDHURI:

2 Q Did you have conversations with counsel for Sonder?

3 MR. FITZMAURICE: Objection, Your Honor, relevance  
4 to credit bidding.

5 THE COURT: I'll sustain the objection as to  
6 relevance.

7 Again, Mr. Choudhri, you've got a couple more  
8 questions. Let's make them worth your time and Mr. Conrad's  
9 effort.

10 BY MR. CHOUDHURI:

11 Q Does the bank have an agreement with the trustee to pay  
12 the admin expenses, whatever they are?

13 MR. FITZMAURICE: Your Honor, is Mr. Choudhri  
14 asking other than the provisions of the plan which could be  
15 read in that way?

16 THE COURT: I'm not sure what he's asking. I'll  
17 let him rephrase the question.

18 BY MR. CHOUDHURI:

19 Q As we sit here today, the plan is not confirmed, right?

20 A Correct.

21 Q And the plan has a lot of contingencies, correct?

22 A I don't know. You have to be more specific.

23 Q Is there -- is the plan or any agreement with the  
24 trustee conditioned on allowing the bank to credit bid?

25 MR. FITZMAURICE: So objection, Your Honor, the

1 plan speaks for itself. But we're also here on credit  
2 bidding, not confirmation.

3 THE COURT: I'll sustain the objection.

4 BY MR. CHOUDHURI:

5 Q Did the trustee tell or communicate or the trustee's  
6 representative communicate with you that not having a capped  
7 credit bid worth bidders at an auction?

8 A So your question is whether or not not having a cap  
9 would effect? I remember the request being made about  
10 whether or not we would consider not having a -- or whether  
11 or not the bank would consider having a cap on its credit  
12 bid. I remember that request being made, or inquiry.

13 Q And the bank's position is that's non-negotiable?

14 MR. FITZMAURICE: Objection, Your Honor, non-  
15 negotiable. Assumes facts not in evidence.

16 THE COURT: I'll sustain the objection.

17 BY MR. CHOUDHURI:

18 Q Is there any limit that the bank is putting on the  
19 trustee or the estate for admin expenses?

20 MR. FITZMAURICE: Objection, relevance.

21 THE COURT: I'll sustain the objection.

22 Mr. Choudhri, I've been, I think, more than  
23 lenient. I've warned you over and over and over again. You  
24 are done with this witness. Please sit down. And I'm going  
25 to encourage you to ask questions on any other witnesses

1     that you want to call that are relevant to what I'm about to  
2     rule on because my patience is very much wearing thin. All  
3     right. You're done. Thank you.

4             Let me go ahead and go to Mr. Burks first because  
5     he's basically on the same side.

6             MR. BURKS: No questions from this witness.

7             MR. FITZMAURICE: Sorry, Charles. Very briefly.

8             THE COURT: Okay. You're opening the door.

9             MR. FITZMAURICE: Your Honor, the agreement says  
10    what it says. No questions.

11            THE COURT: All right. Thank you. You may step  
12    down. Thank you, sir.

13            Mr. Choudhri, Mr. Phillips is on the line. Do you  
14    want to call him? Yes, I'm assuming?

15            MR. CHOUDHURI: Yes, Your Honor.

16            THE COURT: Okay. Then hold on for one second.  
17    Let me make sure he's unmuted.

18            MR. PHILLIPS: My computer screen says I'm muted.  
19    Muted?

20            THE COURT: Well, that's been because you're on a  
21    phone line. So that's different, Mr. Phillips. But if we  
22    can hear you, and you can hear us, that's all that matters.  
23    Please raise your right hand to be sworn. Do you swear or  
24    affirm to tell the truth, the whole truth and nothing but  
25    the truth, so help you God?

1 MR. PHILLIPS: I do.

2 THE COURT: All right. Go ahead, sir.

3 DIRECT EXAMINATION OF THOMAS PHILLIPS

4 BY MR. CHOUDHURI:

5 Q Hello, Mr. Phillips. How are you?

6 A I'm good.

7 Q Will you describe your profession and your background a  
8 little bit for the court here?

9 A I suspect the court knows, but I'm an attorney of  
10 almost 50 years' practice (indiscernible) a partner at Baker  
11 Botts law firm and served in the judiciary several decades  
12 ago.

13 Q Mr. Phillips, were you on the Supreme Court of Texas?

14 A Yes.

15 Q Were you the chief justice of the Supreme Court?

16 A Yes.

17 Q And approximately how long have you been representing  
18 me or affiliated entities?

19 A In one fashion, in one manner or another, perhaps six  
20 or seven years.

21 Q Do you recall the case with Judge Kerrigan?

22 A Yes.

23 Q And you represented me in the divorce case?

24 A Yes, a time in the trial court.

25 Q Mr. Phillips, you have -- you are representing several

1 entities -- well, let me back up. Baker Botts has approved  
2 a contingency -- can you describe this? Has Baker Botts  
3 approved a contingency or what is the process to approve  
4 contingency arrangements at Baker Botts?

5 MR. FITZMAURICE: So objection, Your Honor, there  
6 were several questions.

7 THE WITNESS: Our --

8 MR. FITZMAURICE: If --

9 THE COURT: Mr. Phillips, hold on one second. I  
10 got an objection. I need a rule on that objection.

11 MR. FITZMAURICE: So if the question that's being  
12 asked is the last question, which is the process at Baker  
13 Botts for approving a contingency --

14 MR. CHOUDHURI: Yes.

15 MR. FITZMAURICE: -- then we object on relevance  
16 grounds. If it's any of the prior questions, we still  
17 object on relevance grounds. But also to the extent that  
18 there is some agreement in place, then that is the best  
19 evidence of its terms and we should look at that.

20 THE COURT: All right. Mr. Burks?

21 MR. BURKS: So my response here is that what Mr.  
22 Choudhri is trying to establish the scope and the validity  
23 of causes of action. And I think if we let the two speak, I  
24 think we can get through this quickly and it is relevant in  
25 terms of establishing the -- whether or not there's a

1 material dispute to be resolved, Judge. I mean, that's what  
2 the case law says.

3 THE COURT: I'll sustain the objection as to the  
4 Baker Botts process as not relevant.

5 Mr. Choudhri, ask your question again. Be  
6 specific so I know exactly what you're talking about and  
7 we'll go from there.

8 BY MR. CHOUDHURI:

9 Q Mr. Phillips, did Baker Botts approve the contingency,  
10 the arrangement with Galleria 2425 Owner, LLC?

11 MR. FITZMAURICE: So objection, Your Honor,  
12 leading and also vague as to time.

13 THE COURT: Be more specific as to what  
14 litigation, when, where, how, Mr. Choudhri.

15 BY MR. CHOUDHURI:

16 Q Mr. Phillips, as it relates to Sonder, holdings of  
17 Sonder USA, are you familiar with that entity?

18 MR. FITZMAURICE: So Your Honor, objection, Sonder  
19 has nothing to do with whether or not the bank can credit  
20 bid at the auction. And if the Baker Botts contingency fee  
21 arrangement as relates to claims against Sonder, that has no  
22 relevance to the bank's ability to credit bid.

23 THE COURT: I'll let you go as to relevance. I  
24 mean, I understand you bought those claims. I understand  
25 you have a right to sue them. But I'm not sure what it has



1 to do with credit bidding.

2 MR. CHOUDHURI: Your Honor, it has to do with some  
3 communications I can share as it relates to the Bank of  
4 Kuwait controlling if those claims are deeming sold and  
5 having and exercising control over the trustee throughout  
6 the process to make an agreement to make sure they can  
7 credit bid (indiscernible) supported doing so, rather than  
8 monetizing the claims for the estate, that would actually  
9 help (indiscernible) --

10 THE COURT: Okay. So let me get this right. You  
11 want to argue that the fact that you won and you bought the  
12 claims now is unfair to some other parties. That makes no  
13 sense to me. You got what you wanted, right? You bought  
14 the claims. And you're going after Sonder, right?

15 MR. CHOUDHURI: From what is best, in my opinion,  
16 for all the creditor in the estate is where I was going  
17 (indiscernible) --

18 THE COURT: I'll sustain the objection as to  
19 relevance. Thank you.

20 BY MR. CHOUDHURI:

21 Q Mr. Phillips, did you have communications or  
22 conversations with the trustee or R.J. or its attorneys  
23 relating to Baker Botts' representation of the debtor?

24 MR. FITZMAURICE: Objection, as it relates to the  
25 bank or as relates to Sonder?

1 THE COURT: As it relates to whom?

2 MR. CHOUDHURI: To Sonder.

3 THE COURT: I don't think anything that has to do  
4 with Sonder has any relevance to the motion that's before  
5 me. So if those are the questions that you're going to ask  
6 Mr. Phillips, you bought the claims. Mr. Phillips can  
7 pursue them for you or for one of your entities, because I  
8 think it was bought by one of your entities. It has no  
9 relevance to the motion that's before me. So let's get this  
10 done quickly. Are you going to ask him anything other than  
11 about Sonder claims?

12 MR. CHOUDHURI: I'll move this along.

13 THE COURT: Well, no, I'm asking a specific  
14 question.

15 MR. CHOUDHURI: I'm getting ready to pass the  
16 witness, Your Honor.

17 THE COURT: Well, I don't -- you don't need to  
18 pass the witness. He's not relevant to what we're here  
19 today for. Okay. Is there something else you're going to  
20 ask him about? Anything else other than Sonder claims?

21 MR. CHOUDHURI: Maybe communications with the  
22 trustee as it relates to the trustee's exercise of how --  
23 what judgments has the trustee made (indiscernible) --

24 THE COURT: Okay. It's not relevant.

25 Thank you, Mr. Phillips. Thank you for appearing.

1     You're excused.

2                 MR. PHILLIPS:  Thank you, Your Honor.

3                 THE COURT:  Thank you.  Do you have another  
4     witness, sir?

5                 MR. CHOUDHURI:  Your Honor, I was going to call  
6     Russell Ingram again as it relate to some rebuttal aspects.  
7     But I don't want to frustrate the court anymore because he  
8     was in court --

9                 THE COURT:  If Mr. Ingram wants testify again and  
10    you want to call him again, that's fine.  As long as it's  
11    relevant, I want to hear it.  Okay.  But if it's not  
12    relevant, I don't want to hear it.

13                MR. CHOUDHURI:  I can just proffer or I can  
14    just --

15                THE COURT:  I don't want a proffer.  If you want  
16    to call him as a witness, call him.

17                MR. FITZMAURICE:  Your Honor, rebutting what?  
18    There's been no other --

19                THE COURT:  I don't know.  But he's got to get on  
20    the stand for me to figure that out.  So you want to call  
21    him?

22                MR. CHOUDHURI:  Yes.

23                THE COURT:  All right.  Mr. Ingram, call on up.  
24    Is he here?

25                MR. TROOP:  Your Honor --

1 MR. FITZMAURICE: He was on the Zoom this morning.

2 MR. TROOP: He was on the Zoom this morning. Your  
3 Honor, Andrew Troop, for Pillsbury, for National Bank of  
4 Kuwait. This is their case-in-chief.

5 THE COURT: I understand.

6 MR. TROOP: Who can they rebut? Who can they call  
7 as a rebuttal witness? They called them as a witness. It  
8 sounds as though we put a witness up that they're going to  
9 rebut. I'm just trying to move this along.

10 THE COURT: I know and I'll let you recall him.  
11 Is he here? Is he on the phone? Can we hear him. Is he on  
12 the phone?

13 CLERK: I do not see him, sir. His name was on  
14 the list earlier. There's no -- I don't know what happened  
15 to the call. It suddenly stopped working. It's seven  
16 minutes behind.

17 THE COURT: I know. It's three to six.  
18 Mr. Choudhri?

19 MR. CHOUDHURI: I can't get --

20 THE COURT: Okay. That's fine. Do you have  
21 anyone else you want to call?

22 MR. CHOUDHURI: I'd like to call R.J. Shannon.

23 THE COURT: All right. Mr. Shannon, come on  
24 forward. Please raise your right hand to be sworn. Do you  
25 swear or affirm to tell the truth, the whole truth and

1 nothing but the truth, so help you God?

2 MR. SHANNON: I do.

3 THE COURT: Please be seated, sir.

4 Go ahead.

5 DIRECT EXAMINATION OF R.J. SHANNON

6 BY MR. CHOUDHURI:

7 Q Mr. Shannon, you spoke to Paul Caldwell, right?

8 A I did.

9 Q And you've seen a letter of intent for a signed  
10 contract that Paul Caldwell signed.

11 MR. FITZMAURICE: Objection, Your Honor, as to  
12 letter, lacks foundation as to signed contract and letter of  
13 intent.

14 MR. CHOUDHURI: I can pull it up, Your Honor. I'm  
15 sorry.

16 THE COURT: Okay. I'll sustain the objection as  
17 to lack of foundation. Go ahead.

18 BY MR. CHOUDHURI:

19 Q Mr. Shannon, you and I have met before in 2021,  
20 correct?

21 A Yes, I believe it was 2021.

22 Q You came to my house and you came to my office. Do you  
23 recall that?

24 A I am confident I never came to your house. I did  
25 attend with Mr. Parkins your office at, I believe, 1001 West

1 Loop.

2 Q Yeah. Let's -- going to go back to --

3 MR. FITZMAURICE: So, Your Honor, relevance to  
4 credit bidding?

5 THE COURT: I'm going to give a little leeway.  
6 It's just preliminary. We'll get to that point.

7 BY MR. CHOUDHURI:

8 Q Mr. Shannon, you were with a firm called Parkins Lee &  
9 Rubio, correct?

10 A I was an associate there, yes.

11 Q And how many lawyers were at this firm?

12 A I believe at that time it was four.

13 Q And would that be Leonard Parkins, Kyung Lee and R.J.  
14 Shannon?

15 A And Charles Rubio.

16 Q And Charles Rubio.

17 A Yes.

18 Q And are you aware that the Bank of Kuwait had received  
19 offers from the borrower, the debtor, to sell the building  
20 and lease the building in around August of 2021?

21 MR. FITZMAURICE: Objection, Your Honor, lacks  
22 foundation.

23 THE COURT: I'll sustain the objection.

24 MR. CHOUDHURI: I'm going to take this off, Your  
25 Honor. Hold on. I'm going to pull this on.

1 THE COURT: Just pull the cord off. It'll stop  
2 projecting.

3 BY MR. CHOUDHURI:

4 Q Mr. Murray, you -- Mr. Shannon, you have produced lots  
5 of documents in this case known as Murray production; is  
6 that fair?

7 A I don't believe that is how it was designated. But  
8 there were lots of documents.

9 Q And those documents are basically inclusive of your  
10 investigation and interviews that you conducted for the  
11 trustee, correct?

12 A It was in response to requests that may have had some  
13 of that in it. I don't know if that's how I'd characterize  
14 it.

15 Q So when did you leave Parkins Lee & Rubio.

16 A It was either June 1st or the end of May of 2022. And  
17 actually, I do remember. I believe it was May 31st.

18 Q And our communications were limited to only the debtor  
19 in this case or did we have communications as it related to  
20 other representations of me personally in 2425 WL?

21 MR. FITZMAURICE: Objection, Your Honor, relevance  
22 to the bank's ability to credit bid at the auction.

23 THE COURT: Again, what's the relevance to the  
24 credit bidding?

25 MR. FITZMAURICE: Your Honor, this is going to

1 show collusion and bad faith and misrepresentations to the  
2 court, which I can prove, and I'm getting there because  
3 there's been -- you have a May 15th order, Your Honor, where  
4 you said if there are any conflicts (indiscernible) the  
5 parties, and I have come to find out --

6 THE COURT: Again, Mr. Choudhri, here's the  
7 problem, okay? You filed a motion. I gave you a copy of  
8 that motion. You now want to raise all these secondary  
9 issues where there's been no pleadings, nobody's on notice,  
10 okay? The only thing that's before me at this point in time  
11 is the motion to prohibit credit bidding at 353. That's  
12 what I want to hear evidence about. Okay. You're off in  
13 the hinterlands somewhere, okay? And I'm not going to allow  
14 it. All right. So two questions, time up and we're done.  
15 Okay. Go ahead.

16 BY MR. CHOUDHURI:

17 Q You don't recall being on a call with Kyung Lee,  
18 myself, Reese Baker, Melissa Hayward and others where Kyung  
19 Lee and yourself stated unequivocally that we will not allow  
20 any sale to go forward if there is no cap -- where there's  
21 no credit bidding. Do you recall anything like that?

22 A I do not recall a statement like that being made. I do  
23 recall calls, but not that statement.

24 Q Mr. Shannon, you record conversations you have with  
25 people, correct?



1 A Not normally. There were a couple in this case with  
2 respect to interviews that the trustee was not able to  
3 attend.

4 Q So you have a recorded conversation with Paul Caldwell,  
5 correct?

6 A I do.

7 Q And we asked you for that, and you've refused to  
8 provide that?

9 A You asked me for it yesterday afternoon. I believe it  
10 was Mr. Sather who asked me for it, and I explained the  
11 reasons why I believe it was subject to attorney work  
12 product protection. I cited cases and I got no response  
13 from Mr. Sather.

14 Q And you also had -- have you recorded conversations  
15 you've had with anybody at NBK or the attorneys at NBK?

16 A No.

17 Q Have you recorded conversations you've had with me?

18 A No.

19 Q On May 24th, we had a Zoom meeting, right?

20 A I don't -- I don't know if on May 24th we did.

21 Q There was an icon that popped up that said that this  
22 call is being recorded by AI or something like that. Do you  
23 recall that?

24 MR. FITZMAURICE: Objection, Your Honor, lacks  
25 foundation and also relevance to the credit bidding.

1           THE COURT: I'll sustain the objection as to lacks  
2 foundation. Thank you.

3 BY MR. CHOUDHURI:

4 Q     There are marketing materials that I've asked you for,  
5 what the bidders have been provided in this case, correct?

6 A     There are marketing materials, and you have asked for  
7 them. Yes.

8 Q     And you've refused to provide that to me, right?

9 A     No. Actually, I offered to provide them to you. You  
10 asked me for them on Saturday, and I said after the hearing  
11 on Monday, we'll figure out a way to get those to you.

12 Q     Did Deirdre Brown ask you for those?

13 A     Deirdre Brown asked something about the marketing  
14 materials, although it was a little ambiguous that's what  
15 she was talking about. And then the following day, I  
16 believe the following day, after she asked, she withdrew  
17 from the case.

18 Q     Mr. Shannon, have you made statements to others that  
19 I've gone in the control room and I am a cause of whatever  
20 leak that has taken place at the building?

21           MR. FITZMAURICE: Objection, Your Honor, lack of  
22 foundation as to a leak, but also relevance to the credit  
23 bidding motion.

24           THE COURT: Again, we're off in the hinterlands.  
25 And so again, you're on a very, very short leash. Again,

1 nothing pled. You're making wild allegations that aren't  
2 anywhere in the pleadings and you unfortunately are doing  
3 damage to your case, I think, by making those allegations,  
4 Mr. Choudhri. So please ask questions that are relevant to  
5 the motion to prohibit credit bidding. I'm happy to hear  
6 that. But I don't want to hear anything else.

7 BY MR. CHOUDHURI:

8 Q Have you fully investigated the claims against the Bank  
9 of Kuwait?

10 A I have helped the trustee in his investigation. I  
11 believe it's a full investigation. I would say yes.

12 Q So you believe your investigation is complete?

13 A Yes.

14 Q Do you have any value as to what those claims are  
15 worth?

16 A I don't have a dollar amount.

17 MR. MURRAY: Your Honor, may I object?

18 THE COURT: Yes.

19 MR. MURRAY: I own this privilege and I don't let  
20 him answer.

21 THE COURT: Okay. Thank you. I'll sustain the  
22 objection. But I'll also say that Mr. Murray testified as  
23 to what he thought the value of those claims were, and I  
24 heard his evidence.

25 BY MR. CHOUDHURI:

1 Q Have you had conversations with Hilco regarding credit  
2 bidding?

3 A I have not, no.

4 Q Are you aware that the phone number -- let me back up.  
5 There's a big sign on the building that says bankruptcy  
6 sale, right?

7 A I've seen a picture of it, but I have not seen it with  
8 my own eyes. I believe so, but I'm not entirely sure of  
9 that.

10 Q And that phone number went to a 99 cent store real  
11 estate site, a dedicated line for the sale of a 99 cent real  
12 estate portfolio by Hilco, correct?

13 A It did at one -- well, I'm not entirely sure. It did  
14 reference a 99 cent store when you called that number, at  
15 least for a period.

16 Q Do you recall on our phone call that we had actually  
17 called the number so you could hear it yourself?

18 A I do recall that.

19 Q And I can play it in a second. But it was a dedicated  
20 phone line to you --

21 MR. CHOUDHURI: And I'll play the recording in a  
22 second. It's an exhibit (indiscernible). So the phone  
23 number -- Your Honor, may I request assistance to playing  
24 the (indiscernible) --

25 THE COURT: Certainly.

1 WOMAN 1: May I approach?

2 THE COURT: Yes. Come on up.

3 WOMAN 1: Thank you, Your Honor.

4 MR. CHOUDHURI: Appreciate it (indiscernible).

5 BY MR. CHOUDHURI:

6 Q Did you need Hilco -- the Bank of Kuwait's approval  
7 before you hired Hilco?

8 A I didn't hire Hilco. The trustee did.

9 Q And so are there communications where the trustee is  
10 waiting on the bank to approve before hiring Hilco?

11 MR. FITZMAURICE: Objection, Your Honor, relevance  
12 as to whether the bank gets to credit bid.

13 THE COURT: I'll sustain the objection as to  
14 relevance.

15 BY MR. CHOUDHURI:

16 Q Mr. Shannon, do you believe that -- hang on. Mr.  
17 Shannon, I asked you what the admin claim amounts are. Do  
18 you recall that?

19 MR. SHANNON: Objection. Here today? No, you  
20 didn't. So it misstates the --

21 THE COURT: I don't think you asked that question.

22 MR. CHOUDHURI: No. No, no. I didn't ask it  
23 today.

24 THE COURT: Well, ask the question to the witness,  
25 please.

1 MR. CHOUDHURI: Yeah.

2 BY MR. CHOUDHURI:

3 Q I emailed you, Mr. Shannon, asking you what are the  
4 admin claims, correct?

5 A Yes.

6 Q And others like Mark Smith with Barron & Newburger have  
7 also asked you, last week, what are the admin claim amounts,  
8 true?

9 A I believe it was last week that Mark Smith asked, yes.

10 Q And every one of those questions, did you respond with  
11 a number or an approximate number?

12 A No.

13 Q And when asked by me, your response was it's  
14 irrelevant, correct?

15 A That's not my full response. I think it was a five  
16 point thing about it. I'm not sure if I used the word  
17 irrelevant. I might have said it doesn't matter or it's not  
18 material, but along those lines, yes.

19 Q So if somebody wants to come along and provide the  
20 estate a better deal, and they want to know what the admin  
21 claim amounts are, how is that not relevant?

22 MR. FITZMAURICE: Objection, Your Honor, relevance  
23 to the bank's credit bidding at the auction tomorrow.

24 THE COURT: Again, we're talking about plan  
25 confirmation potentially. We're not talking about credit

1 bidding, Mr. Choudhri.

2 MR. CHOUDHURI: And I could go (indiscernible).

3 BY MR. CHOUDHURI:

4 Q Mr. Shannon, you've received multiple offers to buy the  
5 claims against the Bank of Kuwait, correct?

6 A I have not received them. I believe they were directed  
7 towards the trustee.

8 Q Were you emailed offers to buy the estate's claims  
9 against the Bank of Kuwait?

10 MR. FITZMAURICE: Your Honor, relevance to the  
11 bank's credit bidding at the auction.

12 THE COURT: I'll sustain the objection. We've  
13 gone through this before, Mr. Choudhri. It's not relevant.  
14 And again, you're on a very, very tight rope. We've been at  
15 this now for almost nine hours. And so again, I'm going to  
16 direct you and say if you want me to hear something, I  
17 really want to hear it, as long as it's relevant. But if  
18 it's not relevant, I don't want to hear it. Not only do I  
19 not want to hear it, I'm going to make you sit down and be  
20 quiet if you don't. And I'm not going to let you call any  
21 more witnesses and go through this over and over and over  
22 and over again. All right. So please ask the question  
23 that's relevant to credit bidding so I can hear it and we  
24 can move on.

25 BY MR. CHOUDHURI:

1 Q If the phone number on the building is wrong and the  
2 bank is allowed to credit bid, is that a fair process in  
3 your opinion?

4 MR. FITZMAURICE: So objection, Your Honor,  
5 assumes facts not in evidence as to the phone number on the  
6 building is wrong. It mischaracterizes the witness'  
7 testimony.

8 MR. CHOUDHURI: Sorry. Let me withdraw that  
9 question.

10 BY MR. CHOUDHURI:

11 Q Mr. Shannon, what is the phone number listed on -- so  
12 there's two signs on the building, right? There's a sign on  
13 top of the building, or kind of in the middle, third floor  
14 up, a banner that says bankruptcy sale.

15 A I don't know where in the building it was. I saw like  
16 a picture of it.

17 Q Okay, and then there's also this sign that we're  
18 looking at that says bankruptcy sale, right?

19 MR. FITZMAURICE: Objection, Your Honor, assumes  
20 facts not in evidence and lacks foundation as to there is  
21 also this sign. The witness just testified he didn't know  
22 that that was the case.

23 THE COURT: I'll sustain the objection.

24 BY MR. CHOUDHURI:

25 Q Are you familiar with the sign that we're looking at?



1 A I'm actually not. I don't think I've seen that  
2 particular sign before. It does look like the building  
3 behind it. But --

4 Q And what is the phone number on that sign?

5 A 855-755-2300.

6 Q And when we had our conversation, I think end of May,  
7 on a Zoom call, do you recall that?

8 A I do recall that, and it probably was the end of May.  
9 I'm not entirely sure on the exact date though.

10 Q And so the end of May would be approximately a month  
11 since Hilco was hired, right?

12 MR. FITZMAURICE: Objection, Your Honor, lacks  
13 foundation as to when Hilco was hired, also relevance to  
14 credit bidding.

15 THE COURT: I'll sustain the objection as to  
16 relevance as to credit bidding -- bidding, excuse me.

17 MR. CHOUDHURI: I'd like to play this.

18 MR. FITZMAURICE: So Your Honor, we object to the  
19 playing of this. I don't know what it is, who -- or  
20 anything else about it.

21 THE COURT: You can't just play something like  
22 that. That's not the way this works. Okay. So I'll  
23 sustain their objection. Thank you. If you want to ask him  
24 about if he called the phone number, what it reached, those  
25 sorts of questions, ask away. Go ahead (indiscernible).

1 BY MR. CHOUDHURI:

2 Q Did you call the phone number yourself?

3 A I did.

4 Q And do you recall hearing a message that said 99 cent  
5 store real estate by Hilco, dedicated hotline?

6 A I don't remember dedicated hotline. I do remember in  
7 reference to 99 cent store or something. But 99 cent was  
8 there, was in the message.

9 MR. CHOUDHURI: Your Honor, may I move to play the  
10 phone call so that at least it can be transparent on what --  
11 how the phone rings?

12 MR. FITZMAURICE: So Your Honor, objection. The  
13 witness testified earlier that there was a period of time  
14 where that was the case, and it's no longer true. So we'd  
15 object on that basis. We don't know -- we don't have any  
16 idea as to when this recording was made, whose phone or  
17 anything along -- anything along those lines.

18 THE COURT: I'm going to sustain the objection as  
19 foundation on this witness. If you have another witness,  
20 basically you can prove it up. Thank you.

21 BY MR. CHOUDHURI:

22 Q Mr. Shannon, on our phone call that we had, do you  
23 recall that I called the phone number together with you? At  
24 the end of May, me and you had a Zoom call, correct?

25 MR. FITZMAURICE: Objection, Your Honor, relevance

1 to credit bidding.

2 MR. CHOUDHURI: We've covered that.

3 MR. FITZMAURICE: And --

4 THE COURT: Go ahead. I've got to hear it one  
5 more time. Your objection is?

6 MR. FITZMAURICE: Oh, I'm sorry. Relevance as to  
7 credit bidding, Your Honor.

8 THE COURT: I'll sustain the objection. Thank  
9 you.

10 BY MR. CHOUDHURI:

11 Q Have you authorized Hilco or your client or you -- or  
12 are you aware Hilco is marketing the property with the  
13 furniture in it, meaning assets? It's being represented  
14 that assets that are being sold are not assets of the  
15 estate. Are you aware of that?

16 MR. FITZMAURICE: Objection, Your Honor, as to  
17 relevance.

18 THE COURT: Mr. Choudhri, I've already warned you  
19 on the record that the furniture is not relevant to credit  
20 bidding. You've just gone there again. One more time, I'm  
21 going to sanction you. I'm not only going to tell you to  
22 sit down, but I'm going to sanction you. So please ask  
23 questions. You're an intelligent man. You've been through  
24 this. You've heard everything I've said. Please ask  
25 questions that are relevant. Thank you.

1 BY MR. CHOUDHURI:

2 Q Did you ever have conversations with the Bank of Kuwait  
3 regarding credit bidding?

4 A With their attorneys, maybe. I think it was in an  
5 email. I don't know if we ever had a conversation about it.

6 Q Who negotiated the sale motion and the credit bid and  
7 the stalking horse agreements with the Bank of Kuwait?  
8 Whose redlining -- let me withdraw that.

9 Mr. Shannon, were you the one who was actually in  
10 control of redlining the back and forth drafts with the Bank  
11 of Kuwait?

12 MR. FITZMAURICE: Objection, Your Honor, relevance  
13 to credit bidding.

14 THE COURT: I'll sustain the objection.

15 BY MR. CHOUDHURI:

16 Q Was there any reference in any of those documents to  
17 credit bidding?

18 A I actually don't remember a reference to credit bidding  
19 in the bid procedures motion. Now the APA, I believe, did.  
20 It certainly -- I don't think it would have referenced it as  
21 discussing credit bidding. It might have referenced a  
22 credit bid by the bank, but --

23 Q Was there any draft where the tax lien was part of the  
24 credit bid?

25 A Maybe. I don't remember that. I believe this would

1 have happened back in April, maybe in late March when that  
2 was being negotiated.

3 Q Do you believe that a cap on (indiscernible) credit bid  
4 would promote bidding?

5 MR. FITZMAURICE: Same objection, Your Honor, as  
6 to relevance to the (indiscernible) --

7 THE COURT: I'll sustain the objection as to  
8 relevance.

9 BY MR. CHOUDHURI:

10 Q So did you have discussions with the Bank of Kuwait  
11 about you wanted to cap the credit bidding?

12 A It would have been with their attorneys. I certainly  
13 communicated the request that they cap the credit bid.

14 Q So it was something that you or your client wanted to  
15 do, is cap credit bidding?

16 MR. FITZMAURICE: Objection, Your Honor. We've  
17 been over this ground before several times with other  
18 witnesses. Mr. Murray, who is in fact the client, testified  
19 on this topic. So I'd object on that basis.

20 MR. CHOUDHURI: Your Honor, may I project --

21 THE COURT: Sure, go ahead.

22 BY MR. CHOUDHURI:

23 Q Mr. Shannon, is this an email that you sent to Andrew  
24 Troop, Patrick Fitzmaurice and Charles Conrad?

25 A It looks like it. If you could zoom down? Yeah, at

1     least -- at least that part of it.  Yes, that is -- I  
2     believe that is an email that I sent.

3             MR. CHOUDHURI:  I would like to move to admit this  
4     document, Your Honor.

5             THE COURT:  Again, do you have an ECF number?

6             MR. CHOUDHURI:  I do.

7     BY MR. CHOUDHURI:

8     Q     What is the date of this email, Mr. Shannon?

9     A     It looks like April 28, 2024.

10    Q     And the time?

11    A     I don't remember this, but it says there 5:56:57 p.m.

12    Q     Mr. Shannon, could you read what it says on maximum  
13    credit bidding?

14             MR. FITZMAURICE:  Your Honor, the exhibit is not  
15    in evidence.

16             THE COURT:  Again, do you have an ECF number?  I'm  
17    happy to see if anyone has objections and rule on them.  But  
18    it's got to be on ECF in order for me to admit it.  There's  
19    no way to make a record otherwise.  Do you have an ECF  
20    number?  If it's not on ECF, you can't admit it.  It's that  
21    simple.  That's why I enter the orders that I enter.

22             MR. CHOUDHURI:  Your Honor, I can find it.  Just  
23    one second.  Your Honor, there was a (indiscernible) trying  
24    to find it.  There was a motion that might have been  
25    duplicative that Mr. Baker had filed.

1 THE COURT: I just need an ECF number. I don't  
2 need an explanation. Just give me the ECF number.

3 MR. CHOUDHURI: I'm trying to find it right now.

4 MR. BURKS: Your Honor, it's 499-29. ECF number.

5 MR. CHOUDHURI: Yes, sir. Thank you. 499-29,  
6 Your Honor. I'd like to pull it up.

7 THE COURT: Are there any objections to 499-29?

8 MR. CHOUDHURI: I'd like to ask about it. I'm  
9 sorry. We were wrong --

10 THE COURT: All right.

11 MR. TROOP: Then we object, Your Honor.

12 THE COURT: Well, I'm going to look and see. It  
13 is --

14 MR. FITZMAURICE: 499-29 is an email from May  
15 12th. I think the email we were looking at earlier was from  
16 April.

17 THE COURT: Yeah. All right, so move along. I  
18 mean, I'm not going to sit here and let you basically do  
19 what you should have done before trial. Ask your next  
20 question. Mr. Choudhri, ask your next question. I'll give  
21 you one more time. Ask your next question.

22 MR. CHOUDHURI: So I'm just trying to find  
23 something. Sorry, Your Honor.

24 THE COURT: Mr. Choudhri, ask your next question.

25 MR. CHOUDHURI: I found it, Your Honor. It's

1 document -- if I may project, Your Honor.

2 THE COURT: Tell me what ECF number it is.

3 MR. CHOUDHURI: 463-2.

4 THE COURT: Any objection to 463-2?

5 MR. FITZMAURICE: Sorry, Your Honor. I need to  
6 see it. This is the May 12th email again? Is this not --

7 THE COURT: This is not the same thing. Okay.  
8 That's the same thing. Is that what you want to ask him  
9 about?

10 MR. CHOUDHURI: Yes, Your Honor. This is what I  
11 have up.

12 THE COURT: Okay. Any objection to 463-2?

13 MR. FITZMAURICE: No, Your Honor.

14 THE COURT: All right. It's admitted.

15 (Trial Exhibit 463-2 entered into evidence)

16 THE COURT: Thank you.

17 Go ahead, Mr. Choudhri, ask your question.

18 BY MR. CHOUDHURI:

19 Q Mr. Shannon, can you explain what you mean by Paragraph  
20 Number 1, or would you read Paragraph Number 1, please?

21 A Sure.

22 MR. FITZMAURICE: Relevance, Your Honor, to the  
23 credit bidding. We've been down this road a lot. There's  
24 been a lot of testimony, a lot of evidence already on the  
25 fact that the trustee asked the bank to agree to a maximum



1 credit bid and that the bank said no. This is cumulative,  
2 unnecessarily so, given the many times this issue has been  
3 discussed. So we object.

4 THE COURT: All right. I'm going to overrule the  
5 objection.

6 Go ahead and ask him your question.

7 MR. CHOUDHURI: Thank you.

8 BY MR. CHOUDHURI:

9 Q Would you read what Paragraph 1 says, Mr. Shannon?

10 A Yes. Maximum credit bid. To the extent that the  
11 debtor and 2425 WL have a non-frivolous point, it is that a  
12 cap on NBK's credit bid would promote bidding. If there's  
13 some maximum amount that NBK would commit to, that would be  
14 helpful. Comparing that maximum to an attached bid would  
15 also need to consider the tax claims. But that is a  
16 separate issue.

17 Q But the bank did not agree to put a cap despite that's  
18 something that you wanted to do?

19 MR. CHOUDHURI: Objection, Your Honor, lacks  
20 foundation.

21 THE COURT: I'll sustain the objection.

22 Mr. Choudhri, next question.

23 BY MR. CHOUDHURI:

24 Q Can you explain what you mean by timing of hearing of  
25 2425 WL's objection to NBK's claim? What does that mean,

1 Mr. Shannon?

2 A Sure. 2425 WL set their -- self-calendared their  
3 objection for a couple hours before the auction. And I  
4 think we even referenced it in the reply that's referenced  
5 in the first paragraph here where we thought that was an  
6 attempt to interfere with the auction. And so I was, you  
7 know, seeing if there was a -- there were two possible ways  
8 to deal with that one, which is addressed after the dash  
9 there.

10 Q Mr. Shannon, is there a reason that there's been a lack  
11 of -- or do you believe that there has been a lack of  
12 transparency between -- or let me back up. I want to say  
13 this right, so I don't say it wrong. Do you believe the  
14 trustee and this representative have been transparent to  
15 other creditors in this case?

16 MR. FITZMAURICE: So --

17 MR. MURRAY: Object.

18 MR. FITZMAURICE: -- objection, Your Honor, as to  
19 relevance to the credit bidding and I --

20 THE COURT: It's not relevant to credit bidding at  
21 all.

22 MR. FITZMAURICE: -- I think Mr. Murray has other  
23 objections as well.

24 THE COURT: Move on, Mr. Choudhri.

25 BY MR. CHOUDHURI:

1 Q Do you recall questions by me about credit bidding --  
2 let me go back up (indiscernible) --

3 MR. CHOUDHURI: I'm sorry, Your Honor. Just one  
4 second.

5 MR. MURRAY: Your Honor, I want to object to  
6 questions that are asked or about to be, about Mr. Shannon's  
7 beliefs, opinions, thoughts. Those are things that the  
8 estate pays for. He hasn't paid for it, and I'm not waiving  
9 privilege. If he's asking about facts and if the facts are  
10 what Mr. Shannon heard Mr. Choudhri say, that's hearsay and  
11 not a party opponent.

12 THE COURT: All right. Thank you.

13 BY MR. CHOUDHURI:

14 Q The cash collateral motion filed by the trustee, I  
15 believe it was May -- March the 21st. It had a timeline of  
16 selling the building and it had a credit bit component in  
17 it.

18 MR. CHOUDHURI: That's a bad question. I'm sorry,  
19 Your Honor.

20 MR. MURRAY: Object to relevance. It's a motion  
21 the court's ruled on. The order speaks for itself.

22 THE COURT: I'll sustain the objection as to  
23 relevance.

24 Mr. Choudhri, you're taking way too long between  
25 questions and you need to speed your presentation up and you

1     need to ask relevant questions. We can't take 35 to 45  
2     seconds every time between every time that you pause to ask  
3     a question, not at 6:15 in the afternoon or actually 20  
4     to -- that clock's wrong. It's 20 to 7:00.

5     BY MR. CHOUDHURI:

6     Q     Yeah. Mr. Shannon, do you believe that a credit bid  
7     promotes --

8             THE COURT: They're going to object. You can't  
9     ask him what he believes. Okay. Mr. Murray's objected  
10    already. I've sustained the objection. Ask something else.

11    BY MR. CHOUDHURI:

12    Q     Are there any buyers that you've spoken to that have  
13    taken issue with the credit bid?

14    A     No.

15    Q     Have you spoken to any buyers?

16    A     Their counsel.

17    Q     How many buyers have you spoken to?

18    A     Either two or three. Well, I mean, buyers, you know, I  
19    don't know. Potential bidders, I guess is --

20    Q     Potential bidders, prospects.

21    A     Then at least three.

22    Q     And has there been any discussion about credit bidding  
23    in those calls or communications?

24             MR. FITZMAURICE: Objection, Your Honor. The  
25    issue on the table is whether the bank should be able to

1 credit bid.

2 THE COURT: I'll sustain the objection. It's not  
3 relevant.

4 BY MR. CHOUDHURI:

5 Q Mr. Shannon, if the bank received -- if the bank acted  
6 in bad faith and the bank received --

7 MR. MURRAY: Objection, Your Honor. We're gearing  
8 up for an opinion question and I want to lay down a  
9 marker --

10 THE COURT: It assumes facts not in evidence that  
11 the bank acted in bad faith. I'm not going to allow it.

12 MR. MURRAY: Judge, and I'd like to make an oral  
13 motion for sanctions for at least the time that the estate  
14 is spending for Mr. Shannon and his counsel. Others might  
15 have the same objection. But for the amount of time spent  
16 on every question that he asked that has been asked and  
17 answered or irrelevant or asking for opinion or any of the  
18 other bases that the court has sustained objections over and  
19 over again.

20 THE COURT: I'll take that up. Thank you.

21 BY MR. CHOUDHURI:

22 Q Mr. Shannon --

23 MR. CHOUDHURI: Let me just pull the document  
24 here.

25 BY MR. CHOUDHURI:

1 Q Mr. Shannon, are you aware of offers that were sent by  
2 Holland & Knight or were you recipient of offers that were  
3 sent in 2021 by Holland & Knight to the National Bank of  
4 Kuwait, which included the \$85 million offer?

5 MR. FITZMAURICE: So objection, Your Honor, lacks  
6 foundation, assumes facts not in evidence. It's also not  
7 relevant.

8 THE COURT: It's not relevant, and I'm going to  
9 sustain the objection.

10 And Mr. Choudhri, you've worn out you're welcome  
11 on this witness. You may step down. You're not going to  
12 ask him any more questions.

13 All right. Hold on, hold on. I want to make sure  
14 that no one else wants to ask you any questions.

15 Mr. Burks, do you want to ask any questions?

16 MR. BURKS: No, Your Honor.

17 MR. FITZMAURICE: Briefly, Your Honor?

18 THE COURT: Go ahead.

19 CROSS-EXAMINATION OF R.J. SHANNON

20 BY MR. FITZMAURICE:

21 Q Good evening, Mr. Shannon. You testified earlier that  
22 you spoke with Paul Caldwell?

23 A I did.

24 Q Why did you do that?

25 A To investigate the claims against NBK.

1 Q And as a result of that conversation, did you reach a  
2 conclusion?

3 A I didn't reach a -- I personally did not reach a  
4 conclusion about claims against NBK, no.

5 Q Did Mr. Caldwell tell you whether or not the bank had  
6 told them the contents of the confidential settlement  
7 agreement between the bank on the one hand and Mr.  
8 Choudhri's entities on the other?

9 MR. BURKS: Objection, calls for hearsay.

10 MR. FITZMAURICE: Your Honor, whether or not  
11 Mr. -- the results of that conversation informed the  
12 trustee's investigation and it's relevant to whether -- it's  
13 relevant to the view that the trustee has formed. The fact  
14 that the answer -- regardless of the truth, the answer has  
15 independent relevance to the (indiscernible) --

16 THE COURT: I'll overrule the objection. Go ahead  
17 and answer the question.

18 THE WITNESS: I'm sorry. Could you please restate  
19 it?

20 MR. FITZMAURICE: Sure.

21 BY MR. FITZMAURICE:

22 Q Did Mr. Caldwell tell you whether or not the bank had  
23 told him anything about the confidential settlement  
24 agreement?

25 A He told me that the bank did not tell him anything

1 about the settlement agreement.

2 Q And did he tell you that the reason he didn't complete  
3 the transaction with the debtor was as a result of conduct  
4 by the debtor?

5 MR. BURKS: Objection, leading and hearsay.

6 THE COURT: I'll overrule the objection. Go ahead  
7 and answer the question.

8 THE WITNESS: Yes.

9 BY MR. FITZMAURICE:

10 Q And that was the reason the transaction didn't go  
11 forward?

12 A I don't know if that's the reason or not.

13 Q That was what he told you?

14 A Yes.

15 MR. FITZMAURICE: Thank you.

16 THE COURT: Thank you.

17 Mr. Choudhri, any questions based on those two  
18 limited questions that were asked?

19 REDIRECT EXAMINATION OF R.J. SHANNON

20 BY MR. CHOUDHRI:

21 Q And Mr. Shannon, there's a recording of this  
22 conversation. So whatever you and Mr. Caldwell talked about  
23 is recorded in an audio conversation that you made, correct?

24 A Not every -- not all of it. Only once we started  
25 talking about relevant things, but yes.



1 Q And that's not an audio recording that has been  
2 produced.

3 MR. MURRAY: Objection, asked and answered.

4 THE COURT: I'll sustain the objection.

5 MR. MURRAY: I renew my request for sanctions on  
6 repetitive questions.

7 THE COURT: All right. Thank you.

8 BY MR. CHOUDHURI:

9 Q As it relates to Mr. Caldwell, in response to  
10 questions, Mr. Shannon, you wrote a memo that discussed your  
11 impressions or conversation of Paul Caldwell, correct? What  
12 he told you, what you said, correct?

13 MR. FITZMAURICE: So Your Honor, it's not my  
14 privilege. My understanding --

15 MR. MURRAY: (indiscernible)

16 MR. FITZMAURICE: My understanding is that there  
17 was a document that was produced. I don't know if this is  
18 the document that Mr. Choudhri is referring to. The trustee  
19 has asked for it back, saying that -- saying that it was  
20 inadvertently produced, and it's privileged. So if that's  
21 what they're talking about, I just want to make sure that  
22 we're all on the same page, that there's a live request to  
23 claw back that document based on an inadvertent production.

24 MR. MURRAY: Yeah. I don't object to asking about  
25 the fact that a memo was prepared at my request for me. I

1 don't want to answer anything about what's in it.

2 THE COURT: All right. So you can ask about the  
3 memo, but if it's been asked -- it's been asked to claw back  
4 and it was produced inadvertently, I would say that it's  
5 still privileged.

6 MR. CHOUDHURI: I'm not going to ask questions  
7 about the memo, Your Honor. I'm going to ask questions  
8 about --

9 THE COURT: Well, ask away.

10 BY MR. CHOUDHURI:

11 Q I would like to bring to your attention ECF 499-45 and  
12 let's pull it up.

13 MR. FITZMAURICE: Your Honor, 499-45 appears to be  
14 a, sorry, PowerPoint is that what I was looking for? I  
15 apologize. Produced by CBRE. So I don't think that's  
16 relevant to this witness.

17 MR. CHOUDHURI: It's Exhibit 45.

18 BY MR. CHOUDHURI:

19 Q Mr. Shannon, you had a -- you were made aware from Mr.  
20 Caldwell that he wanted to pay \$75 million for the property,  
21 correct?

22 A I'm not sure if that's how I was made aware of that. I  
23 believe there was a document in some pleading that indicated  
24 an amount. I don't know if I became aware of it from him.

25 MR. TROOP: Your Honor, just because people can't

1     see what's going on, including me, Mr. Choudhri is flipping  
2     through a document and asking questions from it. And the  
3     question I would have, is he flipping through the document  
4     that was just clawed back?

5             THE COURT: I do not know. I'm not looking what  
6     he's looking at on the screens, for that very reason. So I  
7     don't know what he --

8             MR. TROOP: I guess, Your Honor, then the question  
9     is, given your ruling, it's clawed back and it's privileged.  
10    I would ask -- leave it on your screen, Mr. Choudhri.

11            MR. CHOUDHURI: Excuse me. You don't need to  
12    yell, Mr. Troop.

13            MR. TROOP: Actually, Mr. Choudhri, I think I did  
14    it. I apologize, though. I would think, Your Honor, it  
15    might be appropriate for you (indiscernible) --

16            THE COURT: All right. So let me just see what  
17    you're --

18            MR. TROOP: It could actually be something totally  
19    different.

20            MR. CHOUDHURI: It is totally different.

21            THE COURT: Let me just look at it.

22            MR. CHOUDHURI: Can I have I put it up, Your  
23    Honor?

24            THE COURT: Yeah.

25            MR. CHOUDHURI: So --

1 THE COURT: Hit connect.

2 MR. TROOP: He just changed it. Yeah. He just  
3 changed it.

4 BY MR. CHOUDHURI:

5 Q Mr. Shannon, this is not the document that you clawed  
6 back in an email the other day, is it?

7 A It's not.

8 Q Okay. Thank you.

9 MR. CHOUDHRI: Thank you, Mr. Troop.

10 THE COURT: All right. Go ahead, ask your  
11 question.

12 MR. CHOUDHRI: I would move to admit this  
13 document, Your Honor.

14 THE COURT: Again, is it on ECF? If it's not on  
15 ECF, I can't admit it.

16 MR. FITZMAURICE: It is, Your Honor. We can find  
17 the number, but it is on ECF.

18 MR. CHOUDHRI: 499-44.

19 THE COURT: 499-44. Any objections to 499-44?

20 MR. FITZMAURICE: Your Honor, I'd like to just  
21 make sure that that's in fact correct.

22 THE COURT: All right. I'll look, too.

23 MR. SATHER: It's 45.

24 MR. FITZMAURICE: 499-44.

25 THE COURT: Any objections?

1 MR. FITZMAURICE: Not from us, Your Honor.

2 THE COURT: From the trustee? It's admitted.

3 (Trial Exhibit 499-44 entered into evidence)

4 THE COURT: Thank you. Go ahead.

5 BY MR. CHOUDHURI:

6 Q Mr. Shannon, is this document's title R.J.'s notes from  
7 5/3/2024, called Paul Caldwell. Is this -- is this a  
8 document you authored?

9 A Yes. Well, I think so, I mean, based on the first  
10 page.

11 Q You want to look through it and confirm?

12 A Yes, if you wouldn't mind.

13 Q Is this your production on the bottom where it says TE  
14 0008629?

15 A It's not my production. It was the trustee's  
16 production in response to 2425 WL's request, but yes.

17 MR. CHOUDHURI: So we've admitted this document?  
18 This is --

19 THE COURT: It's admitted.

20 MR. CHOUDHURI: Thank you, Your Honor.

21 BY MR. CHOUDHURI:

22 Q. Mr. Shannon, what does this say? R.J. Shannon  
23 discusses previous bid amounts of Caldwell Soames mentioning  
24 \$35 million cash and a \$40 million note?

25 A So I can't remember where I obtained this information

1 or where I obtained the document from, but there's a  
2 document that purports to be a letter of indication from  
3 Paul Caldwell where it had those numbers on it, and I asked  
4 Mr. Caldwell about it. But that's what that reference is  
5 there.

6 Q And it says that you suggest that just a cash amount  
7 could likely secure a deal and acknowledge the need to  
8 review all documents and no guarantees. What do you mean by  
9 that?

10 A That \$35 million would be strong offer at the bid, or  
11 at the auction, but that I didn't have any guarantees and  
12 that Mr. Caldwell would need to review all the documents  
13 before he made any kind of bid. But I thought that \$35  
14 million cash would be a strong offer. I was attempting to  
15 get Mr. Caldwell to participate in the auction at this point  
16 in the -- in the --

17 Q And did you express to him or for him the bid  
18 procedures following that meeting you had with him?

19 A I sent him the bid procedures after the bid procedures  
20 order was entered, because he was somebody who I had a  
21 belief was someone who formerly was interested in the  
22 property. And I believe the order required me to send it to  
23 all of those people, and he is one of them.

24 Q So you were charged to investigate the claims against  
25 the Bank of Kuwait, right? You did this in that process,

1 correct? This interview was because you were investigating  
2 the veracity of the claims against the Bank of Kuwait; is  
3 that fair?

4 A Yes. That was the purpose behind the --

5 Q So if there's evidence that comes out that Mr. Caldwell  
6 was provided confidential information by the Bank of Kuwait  
7 that precluded him from going forward and paying \$75 million  
8 -- now let me back up. You're aware that \$75 million offer  
9 was for 55 percent of the building, right?

10 MR. FITZMAURICE: Objection, Your Honor, lacks  
11 foundation, assumes facts not in -- assuming that we're  
12 talking about just the \$75 million piece and not the --

13 THE COURT: I'll say the objection. It assumes  
14 facts not in evidence. Go ahead.

15 BY MR. CHOUDHURI:

16 Q Did you discuss the credit bid with Mr. Caldwell?

17 A I don't remember if I did or not. If I did, it would  
18 probably be in the document.

19 Q And you believe that conversation you had with Mr.  
20 Caldwell is an attorney-client privileged communication?

21 MR. FITZMAURICE: Objection, Your Honor. I think  
22 that mischaracterizes -- I think that mischaracterizes the  
23 witness' testimony.

24 THE COURT: I'll overrule the objection. Go  
25 ahead.

1           THE WITNESS: I don't know if it's -- I don't know  
2   -- I don't believe it's a privileged communication. I think  
3   it's subject to the actual recording and the particular  
4   questions that I asked him and the way I asked it to him is  
5   subject to attorney work product protection, which is  
6   technically different. But I do believe that is subject to  
7   attorney work product protection.

8   BY MR. CHOUDHURI:

9   Q     Would you believe that if the court and everyone here  
10   could actually hear the recording which was requested, it  
11   would actually shed more light --

12           MR. MURRAY: Objection. He's asking for his  
13   opinion.

14           THE COURT: I'll sustain the objection.

15   BY MR. CHOUDHURI:

16   Q     If the court ordered you to provide and produce that  
17   recording that you have with Paul Caldwell, will you?

18   A     I will comply with the court's orders.

19           MR. CHOUDHURI: Your Honor, I'd like to make an  
20   oral motion that those recordings that he mentioned are  
21   produced so there can be transparency in this process.

22           MR. MURRAY: I object. That's out of order. We  
23   have discovery pending in both directions.

24           THE COURT: I'll sustain the trustee's -- Mr.  
25   Murray's objection to that oral motion and deny it. Thank



1     you.

2     BY MR. CHOUDHURI:

3     Q     Did Mr. Caldwell tell you that Pillsbury represents  
4     him?

5             MR. FITZMAURICE:  Objection, Your Honor, relevance  
6     to the bank's ability to credit bid tomorrow.

7             THE COURT:  I'll sustain the objection as to  
8     relevance.

9     BY MR. CHOUDHURI:

10    Q     Are you aware that Mr. Caldwell signed an NDA?

11             MR. MURRAY:  Objection, form, foundation.

12             THE COURT:  I'll sustain the objection.

13    BY MR. CHOUDHURI:

14    Q     Did you ask Mr. Caldwell if he have any signed  
15    agreements or signed any agreements?

16             MR. FITZMAURICE:  Objection, as to scope, any  
17    signed agreements, with who, related to what?

18    BY MR. CHOUDHURI:

19    Q     Related to 2425 West Loop.

20    A     I don't believe I asked that particular question.  If I  
21    did, I don't remember it.

22    Q     So if -- so instead of investigating the claims against  
23    the Bank of Kuwait -- let me back up.  If there's an auction  
24    and there's a credit bid, whether the building sells for \$20  
25    million or \$40 million, the amount of money the unsecureds

1 get is the same.

2 MR. MURRAY: Objection, opinion. I renew my  
3 request for sanctions on repetitive questions on grounds --  
4 on objectionable grounds that have already been ruled on.

5 THE COURT: I'll sustain the objection. You  
6 already exceeded the scope of the redirect.

7 MR. CHOUDHURI: It was Paul Caldwell. It was  
8 limited -- it was limited to Paul Caldwell (indiscernible)  
9 go back to this document.

10 THE COURT: So you're getting very, very close to  
11 being sanctioned on Mr. Murray's motion. So you need to  
12 wrap it up because if you ask any more questions that I  
13 overrule, I am going to sanction you.

14 BY MR. CHOUDHURI:

15 Q So in this meeting, Mr. Caldwell tells you he recalls a  
16 conversation with Choudhri in February 2023 about the bank's  
17 status regarding declaring default, right?

18 A What are you asking me? If that happened in the  
19 conversation or what the document says?

20 Q If that happened in the conversation.

21 A I don't -- I don't remember that that  
22 (indiscernible) --

23 MR. CHOUDHURI: No further questions.

24 THE COURT: All right. Thank you.

25 Mr. Burks, anything further?

1 MR. BURKS: No evidentiary questions, Your Honor.

2 Thank you.

3 THE COURT: Mr. Fitzmaurice?

4 MR. FITZMAURICE: None, Your Honor.

5 THE COURT: Sir, you may step down.

6 Mr. Choudhri, do we have another witness?

7 MR. CHOUDHURI: I believe Mr. Ingram is on. I  
8 just want to make sure.

9 THE COURT: Mr. Ingram is on the phone, it looks  
10 like. He's not on video.

11 MR. CHOUDHRI: Mr. Ingram, can you hear me?

12 THE COURT: He can now. There he is. Hold on for  
13 one second.

14 Mr. Ingram, can you hear us now? I can't hear  
15 you. You must be muted on your end.

16 MR. INGRUM: All right. There we go. Now you can  
17 hear me.

18 THE COURT: Now I can't see you, unfortunately.  
19 There you are.

20 MR. INGRUM: There I am.

21 THE COURT: All right. I'll remind you Mr.  
22 Ingram, that your still under oath.

23 MR. INGRUM: Yes, sir.

24 THE COURT: Go ahead and ask your question.

25 DIRECT EXAMINATION OF RUSSELL INGRUM

1 BY MR. CHOUDHURI:

2 Q Mr. Ingram, do you recall being in the state court  
3 sometime in 2023 on a matter related to the National Bank of  
4 Kuwait?

5 A Yes.

6 Q And do you recall that there were a couple of parties,  
7 buyers that were interested in -- let me back up.

8 MR. TROOP: Your Honor, can we move the screen --

9 THE COURT: Oh, sure. Sorry. I apologize.

10 MR. TROOP: Thank you.

11 BY MR. CHOUDHURI:

12 Q Mr. Ingram, do you recall being at a hearing with the  
13 National Bank of Kuwait in state court related to 2425?

14 A I never got into the court. I was kept outside and  
15 never stepped inside.

16 Q Right, but you came to court and I think there was like  
17 they wanted to excuse or call, make the witnesses leave or  
18 something, go outside. Do you remember that?

19 A Yes.

20 Q And do you recall your purpose of coming to court or  
21 what kind of -- what the purpose of coming to court was as  
22 it relates to 2425 and the process to sell 2425?

23 MR. FITZMAURICE: Objection, Your Honor, relevance  
24 is to --

25 THE WITNESS: I honestly do not recall what the

1     purpose was.

2                 THE COURT:   Hold on, what's the objection?

3                 THE WITNESS:   Okay.

4                 MR. FITZMAURICE:   Whatever reason Mr. Ingram was  
5     in state court a year ago has no relevance to the bank's  
6     ability to credit bid at the auction tomorrow.

7                 THE COURT:   Mr. Choudhri, I'll let you respond to  
8     that.

9                 MR. CHOUDHURI:   I'll withdraw my question, Your  
10    Honor.

11                THE COURT:   All right.   Go ahead.

12    BY MR. CHOUDHURI:

13    Q     Mr. Ingram, would you describe how a sales process is  
14    affected by a credit bid?

15                MR. FITZMAURICE:   Objection, Your Honor, asking  
16    for expert opinion evidence on an issue that Your Honor has  
17    already ruled on several times today.

18                THE COURT:   I'll sustain the objection.   Thank  
19    you.

20    BY MR. CHOUDHURI:

21    Q     Mr. Ingram, would you consider yourself to be an expert  
22    in the office building sales area?

23                MR. FITZMAURICE:   Your Honor, whatever the answer  
24    to that question is, Mr. Ingram has not been identified as  
25    an expert in connection with this proceeding.   He's

1     incapable of --

2                 THE COURT: I'll sustain the objection. If he  
3     hasn't been designated as an expert, he can't testify as an  
4     expert.

5                 MR. CHOUDHURI: I guess (indiscernible) --

6                 THE COURT: If you had designated him, I'd love to  
7     see him.

8                 THE WITNESS: Do I answer? Do I not answer?

9                 THE COURT: You wait until I tell you to answer  
10    the question. Thank you.

11                THE WITNESS: Okay. Thank you.

12                MR. CHOUDHURI: Your Honor, I think that he may  
13    have been designated as an expert at our earlier hearing.  
14    And I'm not sure if he was (indiscernible) --

15                THE COURT: Nothing in front of me indicates he's  
16    been designated as an expert. So unless you can show me  
17    something, he can't testify as an expert, end of story. So  
18    do you have another question to ask him?

19    BY MR. CHOUDHURI:

20    Q     Mr. Ingram, are you familiar with 2425 West Loop?

21    A     I am familiar with the office, yes.

22    Q     Have you been to the building? Have you toured it?

23    A     I have. I have.

24    Q     And what would a normal marketing --

25                MR. CHOUDHURI: I see you rolling your eyes. I'll

1     just withdraw. I'll pass the witness, Your Honor. I don't  
2     want to frustrate you anymore.

3             THE COURT: Okay. Thank you.

4             Mr. Ingram, I don't think there's going to be any  
5     more testimony for you, but I'll go around and ask anyone.

6             Mr. Burks, do you have any questions for Mr.  
7     Ingram?

8             MR. BURKS: None, Your Honor.

9             MR. FITZMAURICE: None, Your Honor.

10            THE COURT: All right. Then you're excused, sir.  
11     Thank you for appearing.

12            Mr. Choudhri, next witness. Mr. Choudhri, next  
13     witness.

14            MR. CHOUDHRI: Your Honor, I have some tenants  
15     that wanted to. But if the court is not inclined to listen  
16     to that evidence --

17            THE COURT: I'm not sure that your tenants can  
18     give me any relevant information relative to credit bidding.

19            MR. CHOUDHRI: The only relevance that I would  
20     demonstrate for Your Honor is that these are ready and  
21     willing tenants willing to come in and the values  
22     (indiscernible) but the values are (indiscernible) depressed  
23     so a credit bid can take place (indiscernible) motivation  
24     and bad acts of the bank have not wanted to approve leases  
25     and just the historical fact. But if the court would not

1 listen to that, then (indiscernible) --

2 THE COURT: I don't think they can provide me any  
3 sort of information that I would need. Thank you. All  
4 right, do you have anyone else you want to call?

5 MR. CHOUDHURI: (indiscernible) just to talk to my  
6 --

7 THE COURT: You don't get to talk to anyone.  
8 You're representing yourself. Do you have any other  
9 witnesses you want to call?

10 MR. CHOUDHRI: I don't.

11 THE COURT: All right. Thank you. Then we'll  
12 take it you rest.

13 All right. Let me go over to NBK. Do you have  
14 witnesses you want to call? Tell me what you want to do.

15 MR. TROOP: Your Honor, I think at this moment in  
16 time, it's appropriate to make a motion.

17 THE COURT: All right.

18 MR. TROOP: The motion is under Bankruptcy Rule  
19 7052, made applicable to this contested matter by Bankruptcy  
20 Rule 1114. Your Honor, I'm going to be as brief as I can  
21 be. We have been through a lot today. You laid out for the  
22 movants six things on which they needed to present evidence  
23 to convince you that there was cause to prohibit credit  
24 bidding, and not to be too cheeky about it, Your Honor, what  
25 you heard today was a number of witnesses trying to tell you



1     that based on what they were told by Mr. Choudhri, there are  
2     claims. The movants here put on not one single percipient  
3     witness, no one with personal knowledge, no one who could  
4     say there was an act that resulted in Y. What you heard was  
5     a lot of speculation about potential claims, again from a  
6     single source, who no one put on the stand.

7             Your Honor, there's a complete failure of proof  
8     here with regard to a demonstration of cause to prohibit  
9     credit bidding. What there is, however, Your Honor, is  
10    there is admissible evidence with regard to why, as a matter  
11    of law, the claims can't be pursued. And there's also  
12    credible evidence as to the exercise of the trustee's  
13    independent judgment as to why he, in making his own  
14    credibility assessments, determined not to pursue a claim  
15    against NBK.

16            And Your Honor, while I know you can read the  
17    documents themselves and the final cash collateral order  
18    itself, to be clear, Your Honor, there are five or more  
19    stipulations in Section 3 of the cash collateral order.  
20    There's one which is subject to the challenge period, which  
21    has to do with amount, validity and equitable subordination.  
22    There's one that has to do with perfection, which is not  
23    subject to the challenge period. And regardless, Your  
24    Honor, it is clear that once the challenge period ends,  
25    everyone's bound by those stipulations.

1           Your Honor, I may disagree with you on your  
2    decision with regard to the motion to strike the objections.  
3    But Your Honor, what you didn't rule then and what's  
4    applicable now is that with the challenge period having  
5    expired and no act of a trustee having been taken, all of  
6    those stipulations are binding on the parties. You ruled  
7    they could object, and they did. But that doesn't mean the  
8    estate can't settle. That doesn't take the trustee's  
9    ability away, his control, his ability to resolve, settle,  
10   use, sell property, resolve under 1919 (indiscernible) by  
11   the final cash collateral order, and that's what happens  
12   here on a legal side, on the legal barrier side.

13           But again, Your Honor, I go back to the  
14   fundamental point on the factual side. I don't need to talk  
15   about the facts. I don't need to talk about the details.  
16   It's because there wasn't a single percipient witness. The  
17   parties didn't carry their burden. And when you put this  
18   all together, Your Honor, there should be not another hour  
19   spent on this.

20           The credit bidding motion should be denied and you  
21   should exercise your prerogative under Bankruptcy Rule 7052  
22   and 9014 to do that now and not require the National Bank of  
23   Kuwait to put up a case at this point in time. Thank you,  
24   Your Honor.

25           THE COURT: All right. Thank you. I'll let Mr.

1 Burks respond to that and then I'll also let Mr. Choudhri  
2 respond to that.

3 MR. BURKS: That would be a home run if an order  
4 authorizing cash collateral releases it from liability of  
5 the claims that have been filed. Don't take my word for it.  
6 Don't take Mr. Choudhri's word for it. Take Mr. Jerry  
7 Alexander's word for it.

8 So here's the evidence. You took in a long time  
9 ago. I thought this hearing was over, Judge, and I thought  
10 the hearing was over because I thought that what the  
11 judge -- what Your Honor would be ruling is that credit  
12 bidding above 18.6 with the cap is prohibited and the reason  
13 I thought that was I read Flowers v. Sherman District Court  
14 out of the Northern District of Texas. I read Morgan  
15 Stanley Dean Whitter v. Almond out of the district court in  
16 the Northern District of Texas. I read CS Mining Company  
17 bankruptcy decision out of Utah, all cited in the brief.

18 The facts in those cases which disallowed credit  
19 bidding don't say that you determine -- you tried  
20 litigation. You determine if there's a bona fide dispute.  
21 I didn't know how bona fide this dispute was until I just  
22 heard a motion from NBK's counsel saying, Judge, they've  
23 been released. Don't consider them. They were released in  
24 a cash collateral order despite the fact that you've already  
25 ruled that they weren't. They're released in a settlement

1     agreement, which is the subject matter of one of the  
2     lawsuits. So Judge, don't determine the lawsuit, don't hear  
3     the lawsuit, don't hear evidence. Simply rule that a credit  
4     bid can be allowed because there is no bona fide dispute.

5             But don't take my word for it. The evidence that  
6     he's ignoring is Jerry Alexander. Jerry Alexander is an  
7     attorney. If you look at ECF 232-2, he's, in my opinion,  
8     the best lender liability attorney in the state of Texas.  
9     The best reputation, the best. He was one of the state bar  
10    nominees for president in 2023. He is highly regarded by  
11    his peers. Everyone who knows this man knows that he got an  
12    \$18.1 million judgment three years ago in front of Judge  
13    Jordan on lender liability. He's the man that if you have a  
14    lender liability question, you call him.

15            Jerry Alexander thinks as much. He said it's a  
16    great case. That's why I'm going to take it on a pure  
17    contingency. Look at the allegations that are in the  
18    lawsuit regarding the enforceability of the settlement  
19    agreement. Jeff Steidley got on the stand and he said he  
20    likes the case. He wants to bring the case. He's taking it  
21    on a strict contingency fee.

22            There are disputes. They don't want you to hear  
23    them. They don't want you to consider them. But the  
24    evidence is Exhibits 2 through 9, 10, which you took into  
25    evidence, and the testimony of Jerry Alexander and Jeff

1 Steidley.

2 But there's also something that we're all  
3 forgetting about. It happened way back a long time ago.  
4 Maybe it was in another galaxy or universe, but certainly in  
5 a different time zone. And it was when the very first  
6 witness of this case told you that NBK values the property  
7 at somewhere around 18.6 and NBK has a claim of about \$70  
8 million. In other words, by credit bidding up to \$70  
9 million, they can move well above any buyback in the plan.  
10 They can move at a true auction.

11 This court has, in three orders issued in this  
12 court, said the most important thing to this court is to  
13 have a true auction bid to determine the value of this  
14 property. The reason why the three cases I've cited  
15 prohibited auction credit bids is because credit bids don't  
16 facilitate. How do I know that? Well, a lot of judges in  
17 these opinions think that, that they do not facilitate a  
18 fair market value determination. But here's something that  
19 interests me. It was tortured. It was long. It was  
20 difficult. But at Document Number -- at ECF 463-2, that  
21 April 2023 letter from R.J. Shannon to the NBK legal team  
22 says, I really want, for the benefit of everybody, I really  
23 want a cap on credit bidding. And there isn't one.

24 Maybe the old adage of something about if you get  
25 too greedy, you don't get anything. I don't know if that

1 applies here. But that cap should have been there and it's  
2 not. There is no way to know exactly what the damages  
3 models are going to be without trying the cases. You don't  
4 shut down the case and you don't allow credit bid when there  
5 are this many disputes because one thing we do know, I've  
6 never seen an individual more impassioned than Mr. Choudhri.  
7 And I have never seen a presentation by professional  
8 attorneys as impassioned, begging this court to rule that  
9 these causes of action have been released and do not  
10 consider them. Don't say they're bona fide disputes.

11 I'm new to this case so maybe I should have been  
12 used to such passions. I'm a passionate man myself. But,  
13 Judge, the question in the case law is are there disputes.  
14 Do you even know that the NBK claim is going to be  
15 disallowed at all? They have the cash. Let them cash bid  
16 if they want. Let them be the winning cash bidder. Thank  
17 you. The evidence, I've outline what it is. I'm not going  
18 to repeat it. Two witnesses, ten exhibits. Thank you,  
19 Judge.

20 THE COURT: Thank you.

21 Mr. Choudhri?

22 MR. CHOUDHRI: Your Honor, I'd like to point you  
23 to ECF 464. It's a motion for contempt and it's got  
24 exhibits on there. And it was a deposition for credit bid  
25 motion, or for the credit bid hearing so we could ask

1 questions. And when you read Mr. Carter's deposition, Your  
2 Honor, in ECF 464 and the 30(b)(6) notice that happened, six  
3 topics that were not objected to, Mr. Carter couldn't answer  
4 any questions. He refused to.

5 MR. FITZMAURICE: Your Honor -- Your Honor knows  
6 this, but that motion was denied.

7 THE COURT: It was, and I'm going to let him  
8 argue. But --

9 MR. CHOUDHRI: This is argument, I thought.

10 THE COURT: Yeah. It is. Go ahead.

11 MR. CHOUDHRI: So Your Honor, this should be a  
12 fair fight. One of the exhibits shows, if I can find it,  
13 the Bank of Kuwait attaches a PowerPoint for a 30-, 60-page  
14 document with all the key people at the Bank of Kuwait. And  
15 those are the people that were compelled to be deposed, that  
16 they get deposed. Mr. Carter has no knowledge of the credit  
17 bid, the plan. But the night before Monday, he signs a 120-  
18 page declaration. This hide and seek, this hide the ball,  
19 it should be transparent, information should be free-flowing  
20 so Your Honor can have a whole picture.

21 As we sit here today, Your Honor, this claim is  
22 disallowed unless and until it's allowed. They should not  
23 get the benefit. The burden is on them to do what they need  
24 to do. They haven't. The market test -- to come in here  
25 and say that cash collateral releases them without allowing

1 other creditors or an auction or a 9019 or a sale process to  
2 liquidate a claim or allow it to be market tested is unfair.  
3 It is basically a fox guarding the henhouse and the  
4 motivations are misaligned. There is no -- there is no good  
5 reason to not lease up a building. There is no good reason  
6 to only have a few weeks of marketing. There is no good  
7 reason to have a phone number that doesn't go anywhere and  
8 discovery tells -- attempting to get discovery, it's been  
9 stymied or stopped.

10 The claims against the Bank of Kuwait are the  
11 largest, is the largest asset in this bankruptcy and it  
12 should be market tested. If the Bank of Kuwait wants to pay  
13 for those, do a 9019 and others can show up, like the Sonder  
14 issue and bid more and want to buy more, then that's  
15 something that should be done and can be done. But to allow  
16 the asset that is necessary to reorganize and maximize the  
17 estate so one creditor can take advantage I think is  
18 completely unfair.

19 There's an exhibit, if I can -- Mr. Troop's  
20 supplemental exhibits I believe attaches images of the  
21 individuals at the Bank of Kuwait and it talks about how  
22 many hundreds of billions of dollars. The Bank of Kuwait,  
23 if they want to buy this property, they should be able to  
24 bid on it like anybody else, and if they're disqualified  
25 then they should be capped at their stalking horse bid.



1     Anything above that, they should have to pay for it. Even  
2     the stalking horse and even the credit bid up to the  
3     stalking horse, I disagree with. But it should be a fair  
4     fight, and it should be a true market test. And when you  
5     have -- so to back up a little bit, Your Honor, there is a  
6     lot here, there is a lot of evidence and that evidence is  
7     not here to try the entire case against the Bank of Kuwait  
8     today. And there is a colorable dispute. It's a bona fide  
9     dispute. Obviously there's two sides to every story.

10           But one of the things that bothered us in the  
11     beginning was a release of the claims against NBK without a  
12     market test. That should happen first, and as we sit here  
13     today, the claim is disallowed. So they should not get the  
14     benefit of it because what if it's found that they have no  
15     claim? In fact, it goes the other way, that the claims --  
16     the last question that I asked Mr. Murray before I passed,  
17     he said, yes, there are legitimate claims against the Bank  
18     of Kuwait. The trustee said that. And the trustee also  
19     said the claims have not been released against the Bank of  
20     Kuwait. But Mr. Troop says they are released. And as we  
21     sit here right now, the claim is objected to and it's  
22     disallowed.

23           When, and if Your Honor would entertain a summary  
24     judgment or a quick hearing on the adversary that's been  
25     removed and the only reason the motion to remand was filed

1     because of the venue provision selected by Mr. Conrad in the  
2     settlement agreement between Mr. Wetwiska and Mr. Conrad was  
3     Harris County District Court. That's a gateway issue. One,  
4     do they own the note? What if it's later decided the claims  
5     or ownership and then this court has allowed them to credit  
6     bid on an asset and it's later found that they don't have  
7     standing and it creates a conundrum.

8             So obviously we'll respect whatever Your Honor  
9     does. I would just ask Your Honor to disallow the credit  
10    bid. There's no dispute that there's a dispute and compel  
11    or re-urge to compel.

12            Your Honor, if you read the deposition of Mr.  
13    Carter, it is astounding that that's the corporate  
14    representative and he has misrepresented and not been  
15    truthful. And if the court would allow, we can provide a  
16    brief on the statements in this court and other courts and  
17    testimony.

18            MR. FITZMAURICE: Your Honor, I understand this is  
19    argument. He's calling our witness a liar without any  
20    support or foundation or evidence. I understand this is his  
21    argument and he has his --

22            THE COURT: I'm going to (indiscernible) that's  
23    fine. Please sit down.

24            Go ahead. I want to hear what you have to say.  
25    Go ahead.

1           MR. CHOUDHRI: Your Honor, in this case, if you  
2   heard all the evidence and all the facts as it goes to the  
3   issue of the dispute, my understanding is we're not here to  
4   resolve the dispute because that is lots of witnesses. A  
5   trial on the claims between the Bank of Kuwait and the  
6   counterparties.

7           But one thing is undisputed between myself and the  
8   trustee is that there are legitimate claims against the Bank  
9   of Kuwait. Trustee Murray said that in his last answer. So  
10  to allow the Bank of Kuwait to go forward and benefit from  
11  their actions and credit bid would be an injustice. The  
12  Bank of Kuwait has plenty of funds to bid and pay for the  
13  property if they want to buy the property. And the claim  
14  against the Bank of Kuwait should be auctioned or market  
15  tested.

16          Your Honor, I also want to say that there's some  
17  post-hearing briefing that I can demonstrate to you that  
18  everything I have represented to you is not just  
19  accusations. It has facts behind it and evidence. There  
20  has been lots of misrepresentations to Your Honor in this  
21  case, and it ricochets. If somebody says something that's  
22  not true, it ricochets in other places and it creates a  
23  domino effect. And unless you stop that, it keeps going.  
24  People keep getting rewarded for their behavior and they're  
25  going to keep benefiting from it. That's all I have to say,

1 Your Honor.

2 THE COURT: All right. Thank you. All right. So  
3 here's what I'm going to do. What I have before me is a  
4 motion to prohibit credit bidding, which is ECF 353, and the  
5 objection of National Bank of Kuwait, which is at Docket  
6 Number 455. The National Bank of Kuwait has basically asked  
7 me to make a directed verdict, and so based on their motion,  
8 I am going to grant their motion and I'll enter a specific  
9 order that everyone can take to their clients and read, and  
10 I'll do that between now and hopefully midnight tonight.

11 But let me make the following comments for the  
12 record so that the parties know why I'm going to come down  
13 the way I'm going to come down. 363(k) gives a right to  
14 credit bid. The only way I can basically not allow credit  
15 bidding is if I find cause.

16 Okay. I'll turn to what the parties said when  
17 they first opened their case some ten hours ago, ten and a  
18 half hours ago. Mr. Choudhri said I would be astonished at  
19 the evidence and that I would find evidence that there's  
20 been a fraud on the court. I'm afraid Mr. Choudhri hasn't  
21 really met that burden. I'm not sure that's a burden he has  
22 to meet. But certainly I wasn't astonished, and I certainly  
23 haven't found any sort of fraud on the court.

24 Mr. Troop said that there were -- the claims of  
25 Mr. Choudhri were implausible. I think he said that the

1 claims are implausible. I'm not sure that I agree with that  
2 fully. However, I do agree with the trustee's credibility  
3 judgment as to the nature of those claims. I don't have any  
4 questions or reasons to doubt it, and I think that given the  
5 trustee's credibility judgment, I can find that, based on  
6 the evidence that I've heard relative to the specific issues  
7 that I mentioned, I didn't really hear any credible evidence  
8 that NBK has no interest in the property. I really didn't  
9 find or hear any credible evidence about the breach of NBK  
10 by the settlement agreement or even the court's -- the state  
11 court extension to July 3, 2023 of the payment obligations.

12 I realize there are claim objections. I realize  
13 that there are disputes between the parties. But are they  
14 sufficient for the court to find cause so that NBK can't  
15 credit bid? I think the answer to that question is no. I  
16 think they should be allowed to credit bid, and I'm going to  
17 enter an order to that effect, and I'll do that as soon as I  
18 step down from the bench.

19 You'll have that by 9:00 tomorrow because, even if  
20 I write it tonight, I won't have staff until first thing  
21 tomorrow morning.

22 All right. We're adjourned until Wednesday at  
23 9:00 a.m. It is a federal holiday. You have to enter the  
24 courthouse by the far entrance where there is a button. You  
25 will need to push that button. Tell them you're here to

1       come into this courtroom and they will let you in.

2       Otherwise, the courtroom is closed. Thank you. I'll see  
3       you then.

4               What street is that on, judge? Is it on Rust?

5               THE COURT: It's on Rust.

6               MR. TROOP: And, Your Honor, just for everyone in  
7       the courtroom, I want to thank you, but not you so much. I  
8       want to thank your staff.

9               THE COURT: That's not necessary. They'll be paid  
10      to do this, believe it or not. Thank you.

11              MR. TROOP: Thank you, Your Honor.

12              (Proceedings adjourned at 7:35 p.m.)

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CERTIFICATION

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I certify that the foregoing is a correct transcript from  
the electronic sound recording of the proceedings in the  
above-entitled matter.

A handwritten signature in black ink, reading "Sonya M. Ledanski Hyde". The signature is written in a cursive, flowing style. The first name "Sonya" is written in a larger, more prominent script, followed by "M. Ledanski" and "Hyde" in a slightly smaller, more compact script. The signature is centered horizontally within the line of text.

Sonya Ledanski Hyde

Veritext Legal Solutions

330 Old Country Road

Suite 300

Mineola, NY 11501

Date: June 24, 2024

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS**

In Re: Galleria 2425 Owner, LLC  
Debtor

Case No.: 23-34815

Chapter: 11

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**NOTICE OF FILING OF OFFICIAL TRANSCRIPT**

An official transcript has been filed in this case and it may contain information protected under the E-Government Act of 2002, and Fed. R. Bank. P. 9037.

Transcripts will be electronically available on PACER to the public 90 days after their filing with the court. To comply with privacy requirements of Fed. R. Bank. P. 9037, the parties must ensure that certain protected information is redacted from transcripts prior to their availability on PACER.

If redaction is necessary, the parties must file a statement of redaction listing the items to be redacted, citing the transcript's docket number, the item's location by page and line, and including only the following portions of the protected information. This statement must be filed within 21 days of the transcript being filed. A suggested form for the statement of redaction is available at <https://www.txs.uscourts.gov/>.

- the last four digits of the social security number or taxpayer identification number;
- the year of the individual's birth;
- the minor's initials;
- the last four digits of the financial account number; and
- the city and state of the home address.

Any additional redaction requires a separate motion and Court approval.

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- opening and closing statements made on the party's behalf;
- statements of the party;
- testimony of any witness called by the party; and
- any other portion of the transcript as ordered by the court.

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Nathan Ochsner  
Clerk of Court